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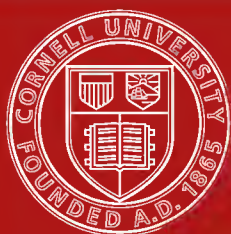
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# Permanent Court of Arbitration at The Hague

UNITED STATES-VENEZUELA ARBITRATION

PROTOCOL OF FEBRUARY 13, 1909

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## The Case

OF

The United States of America

ON BEHALF OF THE

Orinoco Steamship Company

AGAINST

The United States of Venezuela

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With Maps

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WASHINGTON

GOVERNMENT PRINTING OFFICE

1910





CASE OF THE UNITED STATES ON BEHALF OF THE ORINOCO STEAMSHIP  
COMPANY AGAINST THE UNITED STATES OF VENEZUELA BEFORE  
THE PERMANENT COURT OF ARBITRATION AT THE HAGUE.

INTRODUCTORY STATEMENT

The protocol between the United States and Venezuela of February 13, 1909, provided for the submission to arbitration before the Permanent Tribunal at The Hague of three claims against the Republic of Venezuela, the claim of the Orinoco Steamship Company, the United States and Venezuela Company, and the claim of the Orinoco Corporation and its predecessors in interest. Inasmuch as it was felt by Mr. Buchanan, the High Commissioner on the part of the United States, and Dr. Guinán, the Minister for Foreign Affairs of Venezuela, the negotiators of the protocol, that an amicable adjustment of the claims of the United States and Venezuela Company and of the Orinoco Corporation and its predecessors was both desirable and practicable provided time were allowed for the further study and discussion of these two cases, specific provision was made for the amicable adjustment of these two cases during the period of five months from the date of the signature of the protocol.<sup>a</sup>

Owing to the complicated questions of law and fact involved in the two cases and the delays necessitated by communication among the various parties in interest, it was found necessary twice to extend the time allowed by the protocol for the settlement of these cases by mutual agreement between the two Governments.<sup>b</sup>

The protracted and friendly negotiations in regard to these two claims terminated in the signature of two protocols dated, respectively, August 21, 1909, and September 9, 1909, which embody the adjustment of the claims of the United States and Venezuela Company and of the Orinoco Corporation upon terms at once sat-

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<sup>a</sup> See protocol of February 13, 1909, Article XII, Appendix, p. 3.

<sup>b</sup> See Appendix, p. 86.

isfactory to the parties in interest and honorable to both Governments.<sup>a</sup>

Upon the date of the signature of the protocol of settlement in the case of the Orinoco Corporation, the United States Minister at Caracas, in pursuance of telegraphic instructions from the Department of State, addressed a note to the Venezuelan Minister for Foreign Affairs expressing the peculiar gratification of the Government of the United States at the happy settlement of that longstanding and vexations controversy and making

“renewed suggestion of the hope of the State Department that the United States of Venezuela will see its way to make a satisfactory adjustment of the Orinoco Steamship Company case, which is now the only case remaining for arbitration under the Protocol of February 13, 1909.”

To this the Venezuela Minister for Foreign Affairs made a most friendly and courteous response, concluding, however, with the statement that

“in regard to the case of the Orinoco Steamship Company, which was absolutely terminated by the arbitral award of the Honorable Doctor Barge, the views of the two Governments being so widely divergent, and it not appearing probable that the Government of the United States will cease to insist on its position in that matter, the Government of the Republic deems that the only possible solution of the matter is to conform to the provisions in regard thereto of the Protocol agreed upon on February 13th last.”<sup>b</sup>

This courteous refusal on the part of the Government of Venezuela to consider the amicable adjustment of the claim of the Orinoco Steamship Company leaves the United States no alternative but to present this claim to the Permanent International Tribunal at The Hague in accordance with the provisions of Article I of the Protocol of February 13, 1909. That Article reads as follows:

#### ARTICLE I.

With respect to the first of these claims, that of the Orinoco Steamship Company, the United States of Venezuela has upheld the immutability of the arbitral decision of Umpire Barge, rendered in this case, alleging that said decision does not suffer from any of the causes which by universal jurisprudence give rise to its

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<sup>a</sup> For texts of protocols of settlement, see Appendix, pp. 23 and 28.

<sup>b</sup> For complete text of these notes see Appendix, pp. 1315-1316.

nullity, but rather that it is of an unappealable character, since the *compromis* of arbitration can not be considered as void, nor has there been an excessive exercise of jurisdiction, nor can the corruption of the judges be alleged, nor an essential error in the judgment; while on the other hand, the United States of America, citing practical cases, among them the case of the revision, with the consent of the United States of America, of the arbitral awards rendered by the American-Venezuelan Mixed Commission created by the Convention of April 25, 1866, and basing itself on the circumstances of the case, considering the principles of international law and of universal jurisprudence, has upheld not only the admissibility but the necessity of the revision of said award; in consequence of this situation, William I. Buchanan and Doctor Francisco González Guinán, in the spirit that has marked their conferences, have agreed to submit this case to the elevated criterion of the ARBITRAL TRIBUNAL created by this Protocol, in the following form:

The ARBITRAL TRIBUNAL shall first decide whether the decision of Umpire Barge, in this case, in view of all the circumstances and under the principles of international law, is not void, and whether it must be considered so conclusive as to preclude a reexamination of the case on its merits. If the ARBITRAL TRIBUNAL decides that said decision must be considered final, the case will be considered by the United States of America as closed; but on the other hand, if the ARBITRAL TRIBUNAL decides that said decision of Umpire Barge should not be considered as final, said ARBITRAL TRIBUNAL shall then hear, examine and determine the case and render its decision on the merits.

It will be observed that in accordance with the terms of this article, two questions are submitted to the Permanent Tribunal at The Hague. They are, in the precise language of the protocol: (1) Whether the decision of Umpire Barge, in view of all the circumstances and under the principles of international law, is not void, and whether it must be considered so conclusive as to preclude a reexamination of the case on its merits. (2) If the arbitral tribunal decides that said decision of Umpire Barge should not be considered as final, said arbitral tribunal shall then hear, examine and determine the case and render its decision on the merits.

Although the protocol thus clearly defines the two questions at issue, the question of the revision of the Barge award and the question as to the merits of the claim as they may be determined *de novo* by this tribunal, it will at once be perceived that the two questions

do not lend themselves to separate and distinct treatment. It is impossible to understand—much less discuss—Dr. Barge's decision and the question of its revision without first thoroughly understanding the merits of the case as presented to Dr. Barge. It is impossible to point out the plain departure of the learned umpire from the terms of the protocol which defined his jurisdiction and controlled the exercise thereof, to call attention to what are believed to be the numerous and essential errors of law and fact committed by the learned umpire without a thorough and complete understanding of the law and the facts of the case which the two Governments had placed before him for decision. It will be necessary, therefore, briefly to review the claim of the Orinoco Steamship Company and the questions therein involved which were presented to the United States and Venezuela Mixed Commission of 1903.

The statement will be narrative in form and generally chronological in arrangement, and no effort will be made at this time to argue the law or marshal the facts.

#### THE PHYSICAL GEOGRAPHY OF THE ORINOCO.<sup>a</sup>

A glance at the map of Venezuela will show that the Orinoco River with its great navigable tributaries and its vast network of minor affluents is not only the great doorway of Venezuela, but, as has been aptly said, "one of the great commercial doorways of South America."<sup>b</sup>

Of the 1,552,741 square kilometers which constitute the total area of Venezuela, which exceeds the combined area of Germany, France, Italy, The Netherlands, Belgium, Switzerland, and Ireland, some 949,430 square kilometers, which is about twice the area of Spain, form the drainage basin of the Orinoco, while its Delta alone embraces 20061 square kilometers. When it is remembered that the Orinoco is 2373 kilometers long, of which 1930 kilometers are reckoned as navigable; and that its navigable tributaries connect with the navigable affluents of the Amazon, some idea of its present and potential importance as an avenue of transporta-

<sup>a</sup> With reference to the statements here made, see Appendix: The Physical Geography of the Orinoco River, p. 1197 et seq.

<sup>b</sup> See Church's South America, Appendix, p. 1211.

tion may be obtained, particularly in a region in which the railway mileage is a negligible quantity, the entire railway mileage of Venezuela in 1903 amounting to only 842 kilometers.<sup>a</sup>

If the Orinoco is the doorway to Venezuela, the Macareo and Pedernales channels of the Orinoco River are the key to the door, and whoever controls the navigation of these channels holds the key to the commercial treasure-house of Venezuela. Speaking in the terms of commerce, the Macareo and Pedernales channels are the Orinoco. The accuracy of this statement is demonstrated by the following facts: The vast volume of the Orinoco is discharged into the Atlantic through numerous mouths which find their way to the sea through the delta of the river which, spreading out like a fan, has a coast line of approximately 180 English miles between the Boca Grande and the most northerly mouth, the Vagre. The Boca Grande, or main mouth of the Orinoco, flows fourteen to fifteen feet at low water, with a rise of about three feet. The passage of the bar is at all times difficult and in bad weather dangerous even for ocean going steamers.<sup>b</sup>

Nevertheless, the bar of the Orinoco (Boca Grande) is at all seasons of the year navigable for sea-going craft. The river itself, however, although navigable for vessels of fifteen feet draft as far as Ciudad Bolivar during the season of high water from June to October, shoals during the dry season at numerous points, particularly at Panapana Pass, 16 miles below Ciudad Bolivar, so as to render navigation impossible during the greater portion of the year for the ocean-going vessels which alone can safely enter via the Boca Grande. These considerations dispose of the Boca Grande as a commercial channel under present conditions.

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<sup>a</sup> These statistics as regards Venezuela are taken from the handbook of the Bureau of the American Republics with regard to Venezuela, prepared by N. Veloz Goiticoa, Secretary of the Bureau, published at Washington in 1904. See pp. 15, 21, 23, and 474. See also South America, An Outline of its Physical Geography, by Col. George Earl Church, Section: The Orinoco and its Basin, reprinted Appendix pp. 1211; British Sailing Directions, 1903, section on the Orinoco River, pp. 107 to 115, reprinted Appendix pp. 1197. Also see maps of Venezuela and of the Delta of the Orinoco accompanying the case of the United States.

<sup>b</sup> See British Sailing Directions, p. 1197 *supra*, and Report of the Commander of the U. S. S. DOLPHIN to the Secretary of the Navy, Appendix, p. 1213, describing the passage of the bar of the Orinoco.

Of the smaller channels of the Orinoco only two, the Macareo and Pedernales channels, are of commercial importance. The Macareo bar shows a depth of ten feet at low water, and the Pedernales bar a depth of eight feet. This is entirely adequate for river steamers which, although incapable of navigating the Boca Grande and its sea approaches would, if once they could effect an entrance to the river proper, find therein sufficient water for navigation all the year around. The Macareo and Pedernales channels combined with the quiet and land-locked waters of the Gulf of Paria provide safe and constant access to the Orinoco.

Moreover, as a glance at the map will show, the passage from Trinidad, the port of distribution and transshipment, to Ciudad Bolívar, the commercial metropolis of the Orinoco valley, is much shorter via the Macareo and Pedernales channels than via the Boca Grande. In brief, because the Macareo and Pedernales channels afford at all times the safest and shortest avenue to the Orinoco River ports, and during a large part of the year the only avenue for vessels of commercial importance, a monopoly of the navigation of these channels is for all practical purposes a monopoly of the navigation of the Orinoco.

#### THE HISTORY OF THE NAVIGATION OF THE ORINOCO SINCE 1869.

##### *Period from 1869 to 1875.*

The commercial importance of the control of navigation on the Orinoco and the ease and certainty with which absolute control may be obtained and held through the control of navigation via the Macareo and Pedernales channels has been fully realized by the various governments of Venezuela within the last half century. So completely has this been true that the history of the control of the navigation of the Orinoco is in large part the history of Venezuela.

By the law of May 14, 1869,<sup>a</sup> Venezuela threw open the navigation of the Orinoco to the commerce of the world. The invitation thus given was accepted in good faith by an American company (the Venezuela Steam Transportation Company) which was in-

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<sup>a</sup> For text of this law see Appendix, p. 982.

incorporated in the State of New York on the very day on which the Venezuelan law was passed. The company at once established steamship communication between Port of Spain, Trinidad, and Ciudad Bolivar, and shortly afterwards entered upon the up-river traffic between Ciudad Bolivar and Nutrias. Hardly had this navigation been established, however, before the vessels engaged therein were detained and damaged by both parties to a civil war which had broken out and which was only terminated by the inauguration of the constitutional presidency of General Guzman Blanco February 20, 1873. The termination of hostilities however brought no relief to the American company; its vessels were prevented from resuming navigation of the Orinoco by the Venezuelan Executive who had been given by the law of May 17, 1873, large discretionary powers with regard to the opening and closing of customs houses and the general regulation of commerce.<sup>a</sup> This law was followed by the law of June 6, 1874, approving certain preferential contracts which had been made by the Executive with General Juan Francisco Perez and which amounted to all intents and purposes to the granting to General Perez of the exclusive right to the navigation of the Orinoco.<sup>b</sup>

Since the Venezuelan Government not only declined to allow the vessels of the American company to resume navigation, but had granted a practically exclusive concession to others for the navigation of the Orinoco River, nothing remained for the American Company but to sell its vessels to its successful rivals and retire from the field.

Thus ended the first period in the history of the navigation of the Orinoco River.

The diplomatic negotiations between the United States and Venezuela growing out of this incident covering a long period of years, the arbitration which finally ensued, the award of the arbitrators making tardy compensation to the Venezuela Steam Transportation Company for the damages sustained, may be

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<sup>a</sup> For text of law of May 17, 1873, see Appendix, p. 987.

<sup>b</sup> For full text of this law and the contracts with General Perez, see Appendix. p. 993.

mentioned here, although they fall chronologically within the later periods of the history of the navigation of the Orinoco.

*Period from 1875 to 1891.*

The history of the second period of the navigation of the Orinoco is replete with decrees declaring and raising blockades, opening and closing ports and custom houses, and granting various concessions for navigation.<sup>a</sup> The first of these which it is worth while to notice at present is the law of May 20th, 1882<sup>b</sup> approving the contract between the Executive and General Lino Duarte Level, which, in Article 18 bears incidental, but not the less eloquent witness to the importance attached to the navigation between Trinidad and Ciudad Bolivar in the specific permission which it grants to the concessionaire to carry cattle to Trinidad, and to take on coal there, but without taking on any cargo.

The Law of July 7th, 1883,<sup>c</sup> approving the contract between the Executive and Mr. Luis Vallenilla, provides, that the concessionaire "shall have the exclusive privilege of navigation on the Macareo, Pedernales, Vagre, Cocuima, and any other navigable channels of the Orinoco, all other steam or sailing vessels being obliged to enter said river by the Boca Grande or the Boca Navios." The duration of this contract was fixed for a term of five years and it is followed by a resolution of February 16, 1886,<sup>d</sup> setting forth that Mr. Vallenilla, the concessionaire, had complained of the intrusion of the Steamer Bermudez upon the Macareo channel in its voyages to Ciudad Bolivar, and directing that the owners of the Bermudez be notified "of the prohibition against said steamer passing, in its voyages to Ciudad Bolivar, through the Macareo channel."

On October 25, 1886, however, we find an executive decree purporting to found itself on Law 6<sup>e</sup> of the Code of Hacienda, which without referring to the Vallenilla contract of 1883 throws

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<sup>a</sup> See Appendix, p. 999.

<sup>b</sup> For text of law of May 20th, 1883, see Appendix, p. 1012.

<sup>c</sup> For text of this law, see Appendix p. 1024.

<sup>d</sup> For text of this resolution, see Appendix, p. 1026.

<sup>e</sup> For text of Law 6 of the Code of Hacienda of 1886, see Appendix, p. 1028.



open to all vessels, native or foreign, the navigation of all of the mouths of the Orinoco, thus ending the second period in the navigation of the Orinoco.

*Period from 1891 to 1894.*

By the law of July 9, 1891, the Venezuelan Congress ratified the contract concluded between the Executive, acting through the Minister of Fomento, and Mr. Pedro Manuel Olaechea whereby the Government grants to Olaechea "the exclusive right, for a period of twenty years, to navigate by steam the Guanare, Cojedes, Portuguesa" and Masparro rivers, and guarantees to him free navigation for his line of steamers from Ciudad Bolivar to the mouths of the Uribante.<sup>a</sup>

In other words, this is an exclusive concession for a term of twenty years of the so-called up river navigation of the Orinoco from Ciudad Bolivar to the head of commercial navigation. This contract came by various mean assignments, as will appear later, into the hands of the Orinoco Steamship Company, the present claimant.

About a year after the granting of the Olaechea contract covering the exclusive franchise for the up-river navigation, the Government of Venezuela made absolutely clear its position with regard to the status of the navigation of the lower Orinoco. John H. Dialogue & Son, an American firm of Camden, New Jersey, under date of November 1, 1892, addressed the following inquiry to the Department of State:

SIR: Will you please obtain information as to the following—We propose to build vessels for transportation purposes from the United States to Angostura on the Orinoco River; to make the connection as direct as possible and to avoid unnecessary expense, it is desirable to utilize the navigation of the Bayous of the Orinoco River which afford the most convenient route; we understand that these Bayous are occasionally navigated by vessels carrying the British flag, and it is quite probable that they are open to flags of other Nations, but it would be very satisfactory to us, before entering into large expense, to know that they are open to all flags and especially the American, and that, that condition would

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<sup>a</sup> For text of this contract, see Appendix, p. 1030.

likely be permanent. If you can kindly procure through our Minister at Caracas an assurance to that effect or any other information relating thereto, it would enable us to proceed with our enterprise without hesitation.<sup>a</sup>

This inquiry was duly brought to the attention of the Venezuelan Government through official channels, and the Venezuelan Minister for Foreign Affairs made reply in a letter addressed to the American Minister at Caracas dated December 22, 1892.<sup>b</sup> In this letter the Minister for Foreign Affairs said that he had consulted his colleague, the Minister of Fomento, who had replied that after a careful search in the archives of this Ministry, there has been found in reference to this question, only the concession which was granted by the National Government to Messrs. C. C. Fitzgerald and George Turnbull, in their contract of September 22-nd. 1883, and of the same month in the year 1886, respectively (the first being void), of the right to navigate the Orinoco and its tributaries, said contractors binding themselves not to obstruct navigation, which should be free to all.

The Minister for Foreign Affairs adds on his own behalf:

In transcribing the foregoing for the knowledge of the Legation, and, as a definite answer, which I have the honor to give to the note of the 21-st. ultimo, I think it well to observe also that, in the "Libro Amarillo" for 1887 (page 43) there is inserted an Executive Decree, given the 25-th. October, 1886, by virtue of which, "vessels navigating the Orinoco, both foreign, and therefore obliged to end their voyage at the port of Ciudad Bolivar, as well as National ones, which are allowed to continue navigating further up the Orinoco and its tributaries, shall be allowed to enter said river by any of the mouths of the Delta, and to return, likewise, by any of them, both being subjected to the laws XVI and XVIII and others, of the Codigo de Hacienda."

This answer was duly transmitted to Messrs. Dialogue & Son.<sup>c</sup>

Under date of January 12, 1893, the Venezuelan Executive, through the Minister of the Interior, entered into a contract with one Alejandro Mantilla for the establishment and maintenance of steam navigation between Ciudad Bolivar and Maracaibo. This contract imposes various duties upon the concessionnaire and provides that he shall be entitled to various exemptions and

<sup>a</sup> See Appendix, p. 1038.

<sup>b</sup> For full text of this letter, see Appendix, p. 1040.

<sup>c</sup> For letter of transmittal, see Appendix, p. 1041.

benefits, particularly a Governmental subsidy and exemption from import duties. By Article V the Government agrees not to grant to any other line of steamers to be established in the future any of the benefits and exemptions contained in the present contract, this being in compensation for the services to be rendered by the enterprise to both national and private interests.<sup>a</sup>

This contract, which was to have had a term of fifteen years, appears for some reason never to have been ratified by the Venezuelan Congress. It is, however, worthy of careful perusal in connection with this case both on account of its resemblance to and difference from the Grell contract, the basic contract under which the Orinoco Steamship Company claims, and which was granted only a little over a year later.

Under date of July 1, 1893, the Venezuelan Executive, being duly empowered, promulgated a decree closing the Macareo and Pedernales channels to vessels engaged in foreign trade. The gist of this decree is contained in the first and second articles, which read as follows: <sup>b</sup>

ART. 1. Vessels engaged in foreign trade with Bolivar City may only pass through the Boca Grande of the Orinoco River, the Macareo and Pedernales Channels being reserved for the coasting trade, and navigation of the other channels of the said river being absolutely prohibited.

ART. 2. In order that the commerce of Bolivar City may not suffer any disturbance in its mercantile operations, permission is granted solely to the lines of steamers now running along the Macareo and Pedernales Channels, in order that, in view of the nautical conditions of the vessels composing them, which do not permit them to navigate the Boca Grande, they may continue this traffic through the Macareo and Pedernales Channels until December 31 next, a period which the Government deems sufficient to enable the owners of said lines to alter their vessels so as to fit them for navigation as required by the provisions of this Decree.

This decree was at once transmitted to the Department of State by the American Minister in Caracas in the following letter dated July 10, 1893:<sup>c</sup>

SIR: I have the honor to transmit herewith a copy and translation of a decree of the Venezuelan Government, dated the 1st instant, relative to the navigation of the Orinoco River. It closes

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<sup>a</sup> For full text, see Appendix, p. 1044.

<sup>b</sup> For full text of this decree see Appendix, p. 1047.

<sup>c</sup> See Appendix, p. 1048.

all of the channels of that river to foreign commerce, except the Boca Grande, reserving the Macareo and Pedernales channels for the coasting trade, and absolutely prohibiting the navigation of its other channels.

I understand that the only American line at present running between the United States and Ciudad Bolivar is the Thebault line, of New York, whose steamer already passes through the Boca Grande. The Department, however, in its instruction, No. 308, of November 4, 1892, transmitted to this legation a copy of a letter from John H. Dialogue & Son, of Camden, N. J., in which they stated that they proposed to build vessels to run between the United States and Angostora (Ciudad Bolivar), and that to make the connection as direct as possible, and to avoid unnecessary expense, they desire to utilize the navigation of the bayous of the Orinoco, which afforded the most convenient route. Before entering upon large expense they desire to know whether these different channels of the Orinoco were open to all flags, and especially the American, and whether that condition was likely to be permanent. The minister of foreign affairs replied, December 22, that by the executive decree of October 25, 1886, either domestic or foreign vessels were allowed to enter the Orinoco by any of its mouths.

The shortest course for steamships proceeding from the United States is to pass westward of the island of Trinidad and enter the Orinoco by the Pedernales or Macareo channels. These channels, I am informed, admit vessels of a draft less than about 14 feet, and for vessels of that class are safer entrances than the Boca Grande.

When the Department of State advised Messrs. John A. Dialogue and Son of this decree this firm responded under date of July 29th, 1893:<sup>a</sup>

that the vessel in which we have taken such an interest and which we built in our yard, was built especially for the navigation of the Orinoco River through the mouths adjacent to Port of Spain, and the vessel is utterly unfit to navigate the principal mouth, and there is no possible way of altering her to make her suitable for such navigation; this steamer was built with the assurance of the Venezuelan Government, that these mouths would be open to navigation by American vessels, contained in the Department's letter of January 11th, to you, copy of which has been sent us.

They added a request for the Department to use its good offices to secure such a modification of the decree of 1893 as would permit American vessels already built "to navigate the bayous adjacent

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<sup>a</sup> For full text of this letter, see Appendix, p. 1049.

to Port of Spain." The Department in response to this request took the matter up informally through the American Minister with the Venezuelan Foreign Office but without result, as will later appear.<sup>a</sup>

It will be remembered that the second article of the decree of July 1, 1893, closing the Macareo and Pedernales channels to the foreign trade permitted the lines of steamers then engaged in the navigation of these channels to continue such navigation until December 31, 1893, a period deemed sufficient by the Government to enable the owners of these vessels to fit them for navigation via the Boca Grande. Under date of January 8, 1894, upon the petition of the Venezuelan Joint Stock Company "Red Star of the Orinoco" this permission was extended to December 31, 1894.<sup>b</sup>

On the 17th day of January, 1894, the Minister of the Interior, duly authorized by the Venezuelan Executive entered into a contract with Ellis Grell, and it is this contract which lies at the basis of the present claim. This contract reads as follows:

The Congress of the U. S. of Venezuela, upon examination of the Contract concluded in this city on the 17th of January of the present year between the Minister of the Interior of the U. S. of Venezuela, duly authorized by the Chief of the National Executive, on the one part; and on the other, Edgar Peter Ganteaume, Attorney for Ellis Grell, transferred to the Venezuelan Citizen Manuel A. Sanchez, and of the additional article to the same Contract dated 10th of May instant, the tenor of which is as follows:

Dr. Feliciano Acovedo, Minister of the Interior of the U. S. of Venezuela, duly authorized by the Chief of the National Executive, on the one part; and Edgar Peter Ganteaume, Attorney for Ellis Grell, and in the Latter's name and representation, who is resident in Port of Spain, on the other part, upon the concurrent vote of the Government Council, have concluded the Contract set out in the following articles:

ART. 1. Ellis Grell undertakes to establish and carry on navigation by steamers between Ciudad Bolivar and Maracaibo within the term of six months reckoned from the date of this Contract, and in such manner that at least one fortnightly trip shall be made, touching at the ports of La Vela, Puerto Cabello, La Guaira, Guanta, Puerto Sucre and Carupano, with power to extend the line to any of the ports of the Republic open to commerce.

<sup>a</sup> See Department's letter of September 20, 1894, Appendix, pp. 1055.

<sup>b</sup> For text of the resolution granting this extension see Appendix, p. 1057.

ART. 2. The steamers shall navigate under the Venezuelan flag.

ART. 3. The Contractor undertakes to transport free of charge, the mail bags which may be placed on board the steamers by the Authorities and merchants through the respective post-offices; the steamers thereby acquiring the character of mail steamers, and, as such, being exempted from all national dues.

ART. 4. The Contractor shall draw up a tariff of fares and freights with the advice and consent of the Government.

ART. 5. The Company shall receive on board each steamer a Government employée with the character of "Fiscal" appointed by the Minister of Finance with the object of watching the handling of the mails and other fiscal interests.

The Company engages also to transport public employés when in commission of the Government at half the price of the tariff, provided that they embark under an express order signed by the Minister of Finance or by Presidents of the States. Military men on duty and troops shall be carried for one fourth of the tariff rates. The Company undertakes also to carry gratis, materials of war, and at half freights all other goods which may be shipped for account and by order of the National Government.

ART. 6. The General Government undertakes not to concede to any other line of steamers any of the benefits, concessions and exemptions contained in the present Contract as compensation for the services to be rendered by the Company both to National and private interests.

ART. 7. The Government of Venezuela will pay to the Contractor a monthly subsidy of four thousand bolivars (4,000) provided the conditions of the present Contract are duly carried out.

ART. 8. The National Government agrees to exempt from the payment of import duties all machinery, effects and implements which may be imported for the use of the steamers, and all other materials necessary for their repair, and, shall also permit the steamers to supply themselves with coal for fuel and provisions for the subsistence of their crews in the ports of Curacao and Trinidad.

ART. 9. The Company shall have the right to cut from the National forests wood for the construction of steamers or necessary buildings, and for fuel for the steamers of the line.

ART. 10. The officers and crew of the steamers as also the woodcutters and all other employés of the Company shall be exempt from military service except in cases of International war.

ART. 11. The steamers of the Company shall enjoy in all the ports of the Republic the same exemptions and preferences as are enjoyed under the law by the steamers of lines established with fixed itinerary.

ART. 12. Until the Government shall have finally designated the ports at which merchandise from abroad shall be transshipped

and the requisite installations shall have been made, the steamers of this line shall be allowed to call at the ports of Curacao and Trinidad, and any steamer coming from the last named island shall also be permitted to navigate the Macareo and Pedernalles channels of the Orinoco river subject to the formalities which by special order will be imposed by the Minister of Finance in order to prevent contraband, for the safeguard of fiscal interests; to all which conditions the Contractor agrees beforehand.

ART. 13. This contract shall remain in force for fifteen years, reckoned from the date of its approbation, and may be transferred by the contractor to another person or corporation upon previous notice to the Government. The transfer shall not be made to any Foreign Government.

ART. 14. Questions and controversies which may arise with regard to the interpretation or execution of this Contract shall be resolved by the tribunals of the Republic in accordance with its Laws, and shall not in any case give occasion for international reclamations.

Two copies of this contract of the same tenor and effect were made in Caracas the seventeenth day of January, 1894.

(S'g'd)

SOLICIANO ACOVEDO.

(S'g'd)

EDWARD P. GANTEAUME.

ADDITIONAL ARTICLE. Between the Minister of the Interior of the U. S. of Venezuela and Citizen Manuel A. Sanchez, Assignee of Mr. Ellis Grell, have agreed to modify the eighth article of the contract made on the 17th day of January of the present year for the coastwise trade navigation between Ciudad Bolivar and Maracaibo in the following terms:

ART. 8. The Government undertakes to exempt from the payment of import duties, the machinery, effects and implements which may be imported for the steamers, and all other materials destined for the repairs of the steamers; and until the Government shall have established the points of transport and coaling ports, the Contractor shall be permitted to take coal and provisions for the subsistence of his crews in the ports of Curacao and Trinidad.

CARACAS: *10th June, 1894.*

(S'g'd)

JOSE R. NUNEZ.

(S'g'd)

M. A. SANCHEZ.

## Decrees:

SOLE ART. The present Contract is approved in all its parts.

Given in the palace of the Federal Legislative Body, in Caracas, the 26th day of May, 1894,—83rd year of Independence and 36th of Federation.

“(Signed)

VICENTE AMENGUAL, *President of Senate.*

J. FRANCISCO CASTILLO, *President of Ch. Depts.*

FRANCISCO PIMENTEL, *Secretary of Senate.*

J. A. BOSA, *Secretary Chamber of Deputies.*

“FEDERAL PALACE IN CARACAS, June 8, 1894.

“Let this Contract be executed and its execution looked after.

“(Sgd.)

JOAQUIN CRESPO.

(Countersigned)

JOSE R. NUÑEZ,

*Minister of the Interior.”*

Notwithstanding the fact that by virtue of the Executive Decree of July 1, 1893, vessels engaged in the foreign trade with Ciudad Bolivar were confined to the Boca Grande, the Macareo and Pedernales channels being reserved for the coasting trade, it will be observed that Article XII of this contract provides that until the Government designates ports of transshipment and makes the requisite installations, the steamers of the concessionnaire are permitted to call at Curacao and Trinidad and are permitted to navigate the Macareo and Pedernales channels between Trinidad and Ciudad Bolivar. By Article VI the Government binds itself “not to concede to any other line of steamers any of the benefits, concessions and exemptions contained in the present Contract as compensation for the services to be rendered by the Company both to National and private interests,” and Article XIII provides that the contract shall remain in force for fifteen years from the date of its approbation. In other words, the Grell contract read in connection with the decree of July 1, 1893, secures to the concessionnaire, unless and until certain ports of transshipment shall have been finally designated and the requisite installations shall have been made, the exclusive right to navigate the Macareo and Pedernales channels of the Orinoco between Trinidad and Ciudad Bolivar. Thus under the Grell contract read in connection with the decree of 1893 the concessionnaire held the key to the navigation of the Orinoco for a term of fifteen years.



The concession had hardly been signed before it was construed in this sense. It will be remembered that under date of January 8, 1894, the Executive on petition of the "Red Star of the Orinoco" had extended the time granted the lines then navigating the Macareo and Pedernales channels between Trinidad and Ciudad Bolivar to fit their vessels to navigate via the Boca Grande until December 31, 1894, but on February 24, 1894, upon the petition of Ellis Grell, the Venezuelan Executive, through the Minister of the Interior, "by virtue of the concessions and exemptions granted in the contract concluded with him on January 17" declared "null and void the foregoing resolution of the 8th of said month, whereby a special extension was granted to the steamship lines carrying on traffic between Bolivar City and Trinidad through the Macareo and Pedernales channels, in order that they might continue carrying on this traffic until December 31, 1894."

When the Grell contract first came before the Chamber of the Deputies of the Venezuelan Congress for consideration, the report of the Permanent Committee on the Interior recommending the congressional approval of the contract was rejected (Session of April 17, 1894).<sup>a</sup>

The next day, however, the report was returned to the committee from which it emanated in order that it might be presented anew to the Chamber in accordance with the rules,<sup>b</sup> and later on during the session of April 23, 1894, the Chamber voted approval of the contract on the first reading.<sup>c</sup> The second reading was ordered on May 9, 1894,<sup>d</sup> and the third reading on May 11, 1894.<sup>e</sup>

The debates in the Chamber of Deputies in regard to the approval of the concession show nothing of interest beyond the following excerpts, which are taken from a speech of Deputy General Jorge

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<sup>a</sup> For a report of the proceedings in the Venezuelan Congress relative to the Grell contract, see Appendix, pp. 1066 et seq.

<sup>b</sup> For report of proceedings of the Chamber of Deputies of April 18, 1894, see Appendix, p. 1072.

<sup>c</sup> For report of proceedings of this date see Appendix, p. 1074.

<sup>d</sup> See Appendix, p. 1076.

<sup>e</sup> See Appendix, p. 1078.

Anderson during the session of April 23, 1904, in which General Anderson opposed the approval of the concession:

"This contract requires to be studied much and very thoroughly because it is being granted to a company of Englishmen \* \* \* Now, Venezuelan ship owners are not allowed to navigate in the Macareo channel, and the English are. \* \* \* I am impressed by the aggravating circumstance that the contractor has a right to establish himself at Trinidad or Curacao and not in our ports \* \* \* The exclusive navigation by the English in the Macareo channel, granted to the English at any time, will give rise to an international claim."

Dr. Sanchez, who also opposed the approval of the concession in a speech delivered at the session of May 9, 1894, spoke in part as follows:

In the first place, "the steamship line may supply itself with coal and provisions for its consumption in the ports of Trinidad and Curacao," while the other coasting vessels take on coal from the ports of the nation.

"Until the Government specifies the port of transshipment in the Republic, the steamers may transship in the islands of Curacao and Trinidad," so that they may do so in these foreign ports during the whole period of the concession.

In the Senate the Grell contract met with no opposition, being read and approved for the third time at the session of May 22, 1894. The Journals of Debates of the Senate for the year 1894 were not published.<sup>a</sup>

Up to this time no specific penalty appears to have been provided for infringing the provisions of the decree of July 1, 1893, closing the Macareo and Pedernales channels to foreign trade, but under date of June 6, 1894, a decree was enacted imposing a fine of five thousand bolivares upon the captain of any infringing vessel for the first offense, and subjecting the vessel to forfeiture upon a second offense.<sup>b</sup>

But the monopoly in the navigation between Ciudad Bolivar and Trinidad via the Macareo and Pedernales channels thus created by the combined effect of the decree of July 1 and the Grell contract and buttressed by this last decree imposing a penalty for its

<sup>a</sup> For minutes of proceedings in the Senate relating to the Grell contract, see Appendix, p. 1098.

<sup>b</sup> For text of this decree see Appendix, p. 1101. It will be noted that this decree antedates the Congressional approval of the Grell contract by two days.

violation was not to go unchallenged. George F. Carpenter, an American citizen, captain of the steamer Bolivar, which was owned by the General Steamship Company, of Wilmington, Delaware, which had previously participated in the navigation between Trinidad and Ciudad Bolivar via the Macareo and Pedernales channels, brought proceedings before the High Federal Court to test the legality of the decree of July 1 and the validity of the Grell concession. His claim, as stated by the High Federal Court in its opinion, was based upon these contentions:

"The General Steamship Co. of Wilmington, Del., U. S. A." of which he claims to be a representative, being authorized by the laws of Venezuela, carried on commerce between Bolivar City and the Island of Trinidad, which commerce is carried on almost exclusively through the Macareo and Pedernales channels, since the other mouths of the Orinoco offer great difficulties to the navigation of vessels which, like the Bolivar, owing to the nature of their commerce, for the transportation on the river, are flat boats and cannot enter through "Boca Grande;" but that by decree of July 1, 1893, The Executive ordered: That foreign commerce might only be carried on through Boca Grande, reserving the Macareo and Pedernales channels for coasting trade, and absolutely prohibited navigation in the other channels of the river, thus rendering it impossible for the company to carry on commerce through said channels between Bolivar City and Trinidad, while permitting Ellis Grell to do so by virtue of his contract concluded with the Government on January 17, last, which contract constitutes in his opinion a monopoly of the commerce between Bolivar City and Trinidad granted to Grell, for the reason that the difficulties of navigation through Boca Grande are too great for boats like the Bolivar, whose sea-going conditions render them capable only of passing through Macareo and Pedernales, this constituting an attack against the freedom of industry guaranteed by No. 8 Article 14 of the constitution in force, and also contradicting Article 1 of Law 14 of the Treasury code, "which opens up Bolivar City, among other ports, to import and export trade *without any restriction whatever*."<sup>a</sup>

The High Federal Court, however, had no difficulty in disposing of these contentions and holding that the Government of Venezuela had a perfect right both under international and municipal law to exclude foreign commerce from the Macareo and Pedernales channels. The court does not even notice in terms

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<sup>a</sup>For text of the opinion of the Special Commission and of the decision of the High Federal Court, see Appendix, p. 1110.

Mr. Carpenter's contentions with regard to the invalidity of the Grell contract as constituting a practical monopoly of the entire navigation of the Orinoco.

These proceedings were duly transmitted to the Department of State by the American Minister at Caracas, and the Department under date of September 20, 1894, advised Messrs. Dialogue & Son that "the validity of the decrees closing all the mouths of the Orinoco River to foreign commerce except the Boca Grande has been sustained by the 'Alta Corte Federal,' or Superior Federal Court of Venezuela." The full text of the court decision was given publicity by the Department of State in the Foreign Relations of the United States for 1894,<sup>a</sup> and the status of the navigation of the Orinoco River was, as the Department had reason to suppose, definitively settled for the life of the Grell concession.

The status of the Grell concession was further recognized in 1895 by two decrees granting special permission to certain vessels to go from Trinidad to Ciudad Bolivar via the Macareo and Pedernales channels on special occasions. The resolution of June 6, 1895, reads as follows:<sup>b</sup>

RESOLVED:

The President of the Republic, in Council of Ministers, has seen fit to grant the permission requested for the steamer *Socorro*, belonging to the "Red Star of the Orinoco" Company, to pass four times, carrying passengers, through the Macareo and Pedernales channels, starting from Ciudad Bolivar and stopping twice at Trinidad, on an excursion which it will make in the service of the Manoa Company via the Orinoco delta.

A similar resolution dated June 25, 1895, is couched in the following language:<sup>c</sup>

RESOLVED:

In view of the request of citizen José Afanador, in which he asks permission for the steamer *Boyacá*, now being fitted out at Trinidad, of Venezuelan nationality, of plain construction, of 40 tons' capacity, owned by Ramón Real, to pass one single time through the Macareo channel toward Ciudad Bolivar, with the ballast of coal necessary for the safety of the vessel, the Constitutional President of the Republic has seen fit to order that the permission requested be granted.

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<sup>a</sup> See Foreign Relations of the United States, 1894, pp. 796-800.

<sup>b</sup> For text of this decree see Appendix, p. 1120.

<sup>c</sup> For text of this decree, see Appendix, p. 1121.

Equally instructive is the following resolution dated July 14, 1896:

RESOLVED:

In view of the petition presented to this Bureau by Mr. Federico Rafael Hart, proposing to the National Executive to establish navigation by steamers from the Island of Trinidad to the ports of Guiria, Yaguaraparo, and Agua Clara, and finding that said proposed contract is in open conflict with the contract already concluded with Mr. Ellis Grell for the navigation between Bolivar City and Maracaibo, with the privilege of extending the line to the open ports of the Republic, the President of the Republic, in a Cabinet meeting, has seen fit not to grant said petition.

By this time the Grell concession had been regularly conveyed by duly executed transfers, after the previously requisite notice had been given to the Government of Venezuela, to the Compañía General Venezolana de Navegacion, and this company duly entered upon the performance of the various obligations imposed upon it as such transferee, and having provided itself with three steamers suitable for the navigation in question and various other property necessary to the business of a common carrier of passengers and freight, engaged in such business, and continued to be engaged therein until on or about the twelfth day of December, 1898.

At this time the exclusive franchise for the navigation of the Macareo and Pedernales channels between Trinidad and Ciudad Bolivar, constituted as it was by the Grell contract, in connection with the decree of July 1, 1893, and granted by the Executive, approved by Congress, fortified by a punitive decree, sustained by the decision of the highest tribunal in Venezuela, and repeatedly recognized in the practical administration of governmental affairs, appeared to offer a solid basis for the investment of capital.

In the latter part of the year 1898, the entire share capital of the Compañía General Venezolana de Navegacion, together with its rights in the Grell contract concession, the steamers and all the other tangible property and assets of this company, including its book accounts against the Venezuelan Government and others, were purchased by and transferred to the Orinoco Shipping and Trading Company, Limited, which association had been organized under the English Companies Acts of 1862 to 1893, and duly

registered in the office of the Registrar of Joint Stock Companies, London, England, on the 14th day of July, 1898. The Orinoco Shipping and Trading Company, Limited, was organized for the express purpose of taking over the franchise and business of the Compañía General Venezolana de Navegacion and other similar properties in Venezuela. A perusal of its memorandum of association will show that its powers were ample for the object in contemplation.<sup>a</sup>

Although the Orinoco Shipping and Trading Company, Limited, was, as has been stated, for business reasons organized under the English Companies Acts, nevertheless ninety-nine per cent. of its entire capital stock and bonded indebtedness was subscribed and paid for by American citizens, and was at all times during the life of the company owned by native born citizens of the United States.

The transfer from the Compañía General Venezolana de Navegación to the Orinoco Shipping and Trading Company, Limited, was made with the requisite previous notice to the Government of Venezuela and approved by that Government, as is evidenced by the Resolution of October 18, 1898, granting to the Orinoco Shipping and Trading Company

upon its organizing as cessionary of the contract concluded by the National Government with Ellis Greel on January 17, 1894, the period of one year from this date within which to establish the bi-weekly navigation between La Guaira and Maracaibo as referred to in Article I of the said contract, the said company not to be entitled to the subsidy of 4000 bolivars stipulated in the same contract until the bi-weekly service to which this Resolution relates is begun.<sup>b</sup>

Later on by the Resolution of the 4th of September, 1899,<sup>c</sup> the time allowed the company for the establishment of navigation between La Guaira and Maracaibo was extended for a further period of six months

in consideration of the grave injuries which, on account of the political agitation of the country during recent years, have been suffered by all enterprises established in Venezuela, owing to

<sup>a</sup> For the text of the memorandum of association of the Orinoco Shipping and Trading Company, Limited, see Appendix, p. 153.

<sup>b</sup> For text of this resolution, see Appendix, p. 1123.

<sup>c</sup> For text of this resolution, see Appendix, p. 1124.

which circumstance the said company has not been able to fulfill the obligations stipulated in the article of the contract referred to; and in view of the very important and valuable services rendered by the said company to the National Government, the President of the Republic has seen fit to resolve:

In the meantime the Orinoco Shipping and Trading Company, Limited, had purchased outright the assets of the Orinoco Red Star Line including its rights under the Olachea contract approved on July 9th, 1891, between the Executive and Mr. Pedro Manuel Olachea for the exclusive navigation of certain up-river tributaries of the Orinoco. By this purchase the Orinoco Shipping and Trading Company, Limited, added to its franchises covering the navigation between Trinidad and Ciudad Bolivar on the lower river the Olachea concession of 1891 already referred to, which covered the exclusive navigation of certain important up-river tributaries of the Orinoco. Under the new management the up-river steamers were operated in conjunction with those plying upon the lower river, and the whole system was placed upon a business-like and efficient basis.<sup>a</sup> This purchase also included the ships and other tangible property of the Orinoco Red Star Line, including its book accounts against the Government of Venezuela. There was due and owing to the Orinoco Red Star Line from the Venezuelan Government when taken over by the Orinoco Shipping and Trading Company, Limited, the sum of 101163.42 pesos venezolanos, equal, at exchange 1.30 pesos per dollar, to \$77,818.01 for services rendered, the bills and vouchers for which were then and should be now in the possession and control of the Government of Venezuela. The Orinoco Shipping and Trading Company continued to render services as required by its contract to the Government of Venezuela when requested by its duly authorized officers, but owing to the revolutionary and other disturbances the vessels of the company were from time to time detained or seized and in certain cases were greatly damaged or wholly destroyed by officers of the Government of Venezuela or by soldiers and others under their command. Detailed accounts of these

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<sup>a</sup> See Mr. Olcott's affidavit, Appendix, p. 1304.

detentions, seizures, and of the destruction of the company's property, together with statements showing the amount of moneys due for services rendered and damages sustained, were rendered to the proper officials of the Government of Venezuela, together with full proofs and vouchers necessary to substantiate the accuracy and justice of these claims.

On May 10, 1900, there was found to be due and owing to the Orinoco Shipping and Trading Company on these various accounts, as shown by detailed statements rendered to the proper officials of the Venezuelan Government with vouchers and proofs accompanying the same, the sum of six hundred and nineteen thousand seven hundred and fifty-two  $27/100$  pesos, equal at exchange 1.30 per dollar to the sum of four hundred and seventy-six thousand seven hundred and thirty-two and  $50/100$  dollars (\$476,732.50), or together with the \$77,818.01 due on account of the Orinoco Red Star Line, a total in U. S. currency of five hundred and fifty-four thousand five hundred and fifty and  $51/100$  dollars (\$554,550.51), on account of which there had been paid by the Venezuelan Government the sum of one thousand one hundred and fifty three and  $86/100$  dollars (\$1,153.86) cash and salt bonds issued by the United States of Venezuela equal to twenty thousand four hundred dollars (\$20,400.00) American currency, leaving a balance due and payable on the tenth day of June, 1900, of five hundred and thirty-two thousand nine hundred and ninety-six and  $85/100$  dollars (\$532,996.85) American currency.

Under these circumstances a balance of \$532,996.85 being then due from the Venezuelan Government to the Orinoco Shipping and Trading Company, an agreement for the settlement of this outstanding indebtedness was reached between Richard Morgan Olcott, the Managing Director of the Orinoco Shipping and Trading Company, Limited, who was fully empowered to act in this connection, and General Cipriano Castro, then President of the Republic of Venezuela. This agreement was embodied in two documents executed, practically simultaneously, on May 10, 1900, by Dr. Felix Quintero, Minister of the Interior of the United States of Venezuela, representing President Castro and duly



authorized for this purpose, and Mr. Olcott.<sup>a</sup> In Mr. Olcott's petition of May 9, 1900 (the day before the execution of the document embodying the terms of settlement already agreed on), and his accompanying memorandum, he sets forth the damages sustained and services rendered by his company. He says in his petition:

For the reasons stated I hope that, as a partial compensation for the numerous services rendered by the company and the consequent losses and damages, the National Government, in its spirit of justice, will grant me an extension of six years more of the navigation contract which has been assigned to my company, as approved by the Federal Legislative Body on May 26, 1894. I also hope that the National Government will excuse me from carrying on traffic between the port of La Guaira and Maracaibo and intermediate ports, it being understood that my company shall in future receive the treatment of the most favored line when it sees fit to carry on this traffic voluntarily.<sup>b</sup>

In response to this petition the Venezuelan Government issued the following decree signed by Dr. Quintero:

Resolved:

Whereas, Mr. Richard Morgan Olcott, Attorney and Manager of the Orinoco Shipping and Trading Co., Lt., has applied to the National Government for an extension of six years longer of the navigation contract under date of June 10, 1894, of which he is Concessioner, and, considering the reasons to be just on which said company founds its requests, the Chief Magistrate of the Republic has seen fit to order:

1. The Navigation contract approved by the Federal legislative body on May 26, 1894, concluded between this Ministry and the citizen Manuel S. Sanchez, and of which the Orinoco Shipping and Trading Co., Lt. is now Concessioner, is hereby extended for six years longer. This extension shall date from the day on which the period fixed in Article 13 of said contract expires.

2. The Concessionary Company shall be obliged, within a period of twelve months from today, to make 12 voyages annually, at least, between the Island of Trinidad and the Venezuelan ports of its eastern itinerary and La Guaira.

3. The Concessioners are exempted from the obligation of establishing navigation from La Guaira to Maracaibo and relinquish the subsidy of 4,000 Bolivars stipulated in Article 7 of the same. With regard to the navigation to Maracaibo the National Government promises to accord to the company represented by Mr. Richard Morgan Olcott the treatment of the most favored navigation lines in case this company should desire to establish traffic to said port in future.

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<sup>a</sup> See Mr. Olcott's affidavit, Appendix, p. 1304.

<sup>b</sup> For text of this petition see Appendix, p. 1128.

In further fulfillment of the arrangement of settlement agreed on between General Castro and Mr. Olcott, Dr. Quintero and Mr. Olcott entered into the following contract of settlement:

Dr. Felix Quintero, Acting Minister of the Interior, duly authorized by the Chief Magistrate of the Republic, party of the first part, and Richard Morgan Olcott, attorney and manager (director) of the Orinoco Shipping and Trading Company Ltd., party of the second part, have privately agreed on the following:

ARTICLE 1. Richard Morgan Olcott, in the name of the Orinoco Shipping and Trading Company Ltd., [acknowledges as settled] every claim, debt, and other right whatsoever which he may have against the Venezuelan Government for services rendered by the vessels, employees, and agents of said company to the General or State Governments, or for loss, deterioration or any other impairment of said vessels, or for any other injuries or losses which the company may have sustained, whether caused by Government forces, revolutionary forces, or otherwise, up to the present, and for all services which the company may continue to render to the General or State Government up to July 1 next.

ARTICLE 2. The Venezuelan Government gives to the company represented by Mr. Richard Morgan Olcott, as compensation on the above-mentioned accounts, the sum of 200,000 bolivars in coin as follows:

a) 100,000 bolivars received to-day in cash by Mr. Richard Morgan Olcott to his satisfaction.

b) 100,000 bolivars to be paid to him according to an agreement to be reached by the parties on the date stipulated by decree of April 23 last regarding claims arising from injuries caused during the war or otherwise.

ARTICLE 3. Richard Morgan Olcott agrees to all the foregoing in his representative capacity.

ARTICLE 4. Doubts and controversies which may arise regarding the interpretation and execution of this contract shall be decided by the Venezuelan courts in accordance with the laws of the Republic, and in no case shall they give rise to international claims.

Done in duplicate of one tenor and a single effect, at Caracas, on May 10, 1900.

FELIX QUINTERO.

RICHARD MORGAN OLCOTT.

On the same day the Minister of the Interior directed a letter to the Secretary of the Treasury reciting this contract and directing the payment of the one hundred thousand bolivars required to be paid in cash in accordance with the terms of the contract. This letter was duly honored by the Secretary of the Treasury, who

paid Mr. Olcott the first hundred thousand bolivars, and on its part the Orinoco Shipping and Trading Company, Limited, in good faith marked as settled and balanced upon the company's books of account its claim against the Venezuelan Government of \$532,996.85, above referred to.

The second hundred thousand bolivars due the Orinoco Shipping and Trading Company, Limited, in accordance with the terms of the settlement of May 10 was to be paid "according to an agreement to be reached by the parties on the date stipulated by decree of April 23 last regarding claims arising from injuries caused during the war or otherwise." The decree of April 23 here referred to sets forth that it is the prime duty of the Government to restore peace, and points out that the state of war then existing had resulted in economic paralysis which could not be ended at once even by the restoration of peace, and, therefore, provides that no claims either of natives or foreigners should be considered "until six months after the decree in which the Chief Executive of the Nation shall declare peace restored." <sup>a</sup>

For the sake of clearness the chronological order of narration will be abandoned long enough to say that a decree of January 24, 1901, provides as follows: <sup>b</sup>

ART. 1. The period of six months referred to in the Executive Decree of April 23 of last year having expired today, and it consequently being necessary to proceed to the study, consideration, and decision of the claims which both natives and foreigners pretend to hold against the nation on account of the war begun May 23, 1899, there is hereby created

A Board of Examination and Determination of Claims, composed of three members, the duties of which shall be to examine and pass upon the claims referred to.

\*       \*       \*       \*       \*       \*       \*

ART. 3. The claims mentioned must be presented to the Board of Examination and Determination of Claims within the period of 90 days from the date of this decree. Upon the expiration of this period new application shall not be received unless the interested party proves in a satisfactory manner that he has been prevented by forces beyond his control.

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ART. 5. The Board created by this decree and to be appointed by separate resolution shall proceed to sit immediately.

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<sup>a</sup> For text of this decree see Appendix, p. 1126.

<sup>b</sup> For the full text of this decree see Appendix, p. 1142.

ART. 6. The Minister of Finance and Public Credit is entrusted with the enforcement of this decree.

A decree of July 4, 1901, provides as follows:

That, as determined, the claims against the Treasury arising from the war begun May 23, 1899, amounted to 1,223,200 Bolivars, this being the amount recognized, according to the report presented by the Board for the examination and determination of claims on June 20 last. And

Considering:

That the present condition of the Treasury will not allow of these claims being settled in cash, and until the next Constitutional Congress meets in order to determine the manner in which they are to be paid,

Decrees:

ART. 1. The Board for the examination and determination of claims shall issue to each of the interested parties a certificate for the amount which, according to the report of June 20 last, has been acknowledged as due to him after being approved by the Minister of Finance and Public Credit.

ART. 2. The National Congress, to which notice shall be given of the present decree at its next session, shall determine the manner and form of payment of both principal and interest.

ART. 3. The Minister of Finance and Public Credit is entrusted with the enforcement of this decree."

A resolution of July 16, 1901, fixes the terms of the certificates in which payment should be made.

To briefly summarize regarding the deferred payment of 100,000 bolivares. The contract of May 10, 1900, required payment "on the date stipulated by decree of April 23, 1900." That decree provides that no claims should be considered until six months after the Executive "shall declare peace restored." The decree of January 24, 1901, ascertained officially that "the period of six months referred to in the Executive Decree of April 23rd \* \* \* expired to-day."

The second 100,000 bolivares has not yet been paid. Nevertheless, the decrees of July 4th and 16th, 1901, provide methods for the payment of other claims less meritorious but more favored.

By the settlement of May 10, 1900, the Orinoco Shipping and Trading Company had declared settled over half a million dollars' worth of legitimate claims against the Government of Venezuela,

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<sup>a</sup> See Appendix, p. 1148.

and had received in return a six-year extension of its exclusive concession to navigate the Macareo and Pedernales channels between Trinidad and Ciudad Bolivar, a hundred thousand bolivars in cash, and the promise of a hundred thousand more to be paid in accordance with an agreement to be reached with the Government on the date stipulated in the decree of April 23.

Such was the situation when on October 5, 1900, the Venezuelan Executive promulgated the following decree:

I, Cipriano Castro, Commander in Chief of the Armies of Venezuela and Supreme Chief of the Republic, decree:

Article I. The decree of July 1, 1893, prohibiting the free navigation of the Macareo, Pedernales, and other navigable channels of the Orinoco River is hereby revoked.

Article II. The Minister of the Interior is charged with the enforcement of the present Decree.

Given, signed, sealed with the seal of the National Executive and countersigned by the Minister of the Interior, in the Federal Palace of the Capitol, at Caracas, on October 5, 1900. (90th year of Independence and 42nd of Federation.)

(L. S.)

CIPRIANO CASTRO.

Countersigned:

(L. S.)

R. CABRERA MALO,

*Minister of the Interior.*

Thus, with the stroke of a pen, without cause, without compensation, without even a hearing, the Venezuelan Executive revoked the exclusive right to navigate the Macareo and Pedernales Channels between Trinidad and Ciudad Bolivar, which constituted the peculiar value of the Company's contract.

President Castro subsequently by his message of February 26, 1901, submitted such of his executive acts as required ratification to the National Constituent Assembly in the following language:

*Citizen Members of the Constituent Assembly:*

The decrees, resolutions, communications, and all documents which have been required for the promulgation, execution, or fulfillment of the provisions and measures which I relate to you will be found, in order that you may examine and consider them, in the various numbers of the Official Gazette of the United States of Venezuela, in whose columns, by decree of December 31, 1886, in force, all documents are authentic and in force which may be issued in the exercise of public authority, and they are effective with respect to the rights and obligations of Venezuelans.

Thereafter on March 6 the Constituent Assembly ratified each and all of the acts of the Executive by the following resolution:

The National Constituent Assembly declares:

1. General Cipriano Castro, leader and supreme director of the Liberal Restorative Revolution, deserves well of his country.

2. General Cipriano Castro, as Chief Magistrate of the Nation, deserves public confidence.

Therefore it resolves:

1. To grant, as it does grant, solemn approval to each and all of the acts which said person has performed as Supreme Leader of the Liberal Restorative Revolution and as Chief Executive of the Nation.

2. The present resolution, signed by all the members of the National Constituent Assembly, shall be presented to the meritorious General Cipriano Castro by a special committee.

Given at the Federal Legislative Palace at Caracas on March 6, 1901 (90th year of independence and 43rd of Federation).

J. P. ROJAS PAÚL,  
*President.*

SANTIAGO BRICEÑO,  
*1st Vice President.*

JOSÉ O. AGUILERA,  
*2nd Vice President.*

Notwithstanding the promulgation of the executive decree of October 5, 1900, the Orinoco Shipping and Trading Co., Limited, having therefore fully performed the obligations on its part required to be performed by and under the contract of June 8, 1894, and with the object and purpose of fulfilling its obligations under article two of the contract of May 10, 1900, for the extension or prolongation of the original contract-concession, on April 2, 1901, began and subsequently completed one voyage between the Island of Trinidad and La Guaira, touching at Venezuelan ports according to the itinerary of the East coast, the vessel despatched on the second of April having reached Port of Spain, Trinidad, on her return trip on the 12th of the same month. Thereafter this vessel, being the only steamer available for such service owned or that could be acquired by the company, was temporarily withdrawn for the purpose of necessary repairs. After notice of intention to withdraw the steamer for such purpose had been given to the proper officials of the Venezuelan Government and no objection had been made to such action, and the repairs having been completed, the following communication on the subject was addressed and mailed to the Minister of the Interior, at Caracas, viz:

“PORT OF SPAIN, TRINIDAD,

“December 10th, 1901.

“To H. E. the Minister of the Interior, Caracas.

“MR. MINISTER:

“According to the settlement effected by us on the 10th day of May, 1900, printed in the *Official Gazette*, and in consideration of the same, it was resolved that the Company should complete by May 10th, 1902, twelve trips between the Island of Trinidad and La Guaira, touching at Venezuelan ports, according to the itinerary of the East Coast. On the 2nd of April last, as we officially notified you, we started to fulfil this contract, and made one voyage, reaching Carúpano on the 3rd, Cumaná and Guanta on the 4th, and La Guaira on the 5th of the same month of April. On the return trip the itinerary was as follows:—Left La Guaira on the 9th April, arrived at Guanta on the 10th, Cumaná on the same day, Carúpano on the 11th and Trinidad on the 12th of the same month. It became apparent during the above-mentioned trip that we should have to make some repairs to the only steamer owned, or that could be acquired by us, and now available for that service; and, as it was impossible to make the repairs (which included the supplying of new boilers and new parts of machinery) here, we were obliged on the 26th April ult., to despatch her to Dundee, Scotland, to her original builders. These necessary repairs have cost us over £8,000 (bolívars 200,000); and they will soon be completed, when she will be able to fulfil Clause 2 of the Resolution of 10th May, 1900, and complete the balance of twelve trips between Trinidad and La Guaira.

“Before starting, however, our steamer on the accomplishment of this contract, we desire to inquire if your Government will guarantee us immunity from the seizure of our steamer from any Venezuelan source.

“The failure to receive a reply from you—a reply conveying the assurance requested—by the first day of January next, would, in our view, exonerate us from complying with that clause in the Contract.

“The loss of our steamer *Nutrias*, and the practical destruction of our steamer *Vencedor*, both on Government account, warrant our asking your kind protection for the steamship *Manzanares*, which, if damaged, or lost, would cause us irreparable injury.

“(S’g’d)

p. p. R. MORGAN OLCOTT.

“THOMAS A. TURNER.”

To this communication said Minister of Foreign Affairs replied as follows:

CARACAS, 16th December, 1901.

*"To the Director of the Orinoco Shipping and Trading Company, Ltd., Port of Spain:*

*"For the information of your Company I remit to you herewith a copy of No. 8,412 of the Official Gazette, in which you will find published the Resolution dictated on the 14th instant and which annuls that of the 10th May, 1900, relative to certain concessions granted to the Orinoco Shipping and Trading Company, Limited.*

*"God and Federation.*

*"(S'g'd)*

*J. A. VELUTINI."*

The resolution of December 14, 1901, therein referred to reads as follows:

Resolved:

The Orinoco Shipping and Trading Company, Limited, having failed to perform the obligations contained in Article 2 of the concession granted by Executive Resolution of May 10, 1900, according to which obligations it was to make at least twelve annual trips between the Island of Trinidad and the ports of its itinerary as far as La Guaira, the said company having made only one single voyage up to the present, this failure to fulfill being injurious to commerce and to the Government, the Resolution of May 10, 1900, is hereby revoked, and the extension and other benefits therein granted are declared null and void.

Let this be communicated and published.

By the National Executive:

J. A. VELUTINI.

Notwithstanding this resolution of December 14, 1901, revoking the extension of the Grell contract granted to the Orinoco Shipping & Trading Company by virtue of the Resolution of May 10, 1900, the Company continued to the best of its ability, in spite of almost insuperable obstacles growing out of the revolutionary difficulties which existed, to discharge its duties under the concessions it rightfully held from the Venezuelan Government. The revolutionary conditions existing along the Orinoco soon reached a stage requiring formal recognition by the Venezuelan Government and on June 28, 1902, President Castro issued a decree, of which articles 1 and 2 read as follows:



ARTICLE 1. As a result of the occupation of Ciudad Bolivar by rebellious forces, navigation on the waters of the Orinoco is hereby prohibited, the extent of coastline embraced within the mouths of said river is blockaded, and the ports of Guiria and Caño Colorado are closed to commerce and navigation.

ARTICLE 2. The port of La Vela de Coro is likewise declared blockaded.

By virtue of article 4 of the same decree vessels which had already been despatched to the blockaded ports were granted certain periods from the date on which the decree was communicated to the various foreign governments to enter the blockaded ports and discharge their cargoes.<sup>a</sup>

On July 19, 1902,<sup>b</sup> the port of Carupano was added to those declared to be blockaded by the decree of June 28, 1902. On August 23, 1902, the blockade of Carupano was raised.<sup>c</sup> On March 7, 1903, the blockading decree of June 28, was declared to be in full force and effect, and the ports of Guanta and Carupano were added to the list of those under blockade,<sup>d</sup> and on March 11, 1903, the blockade declared by the decree of March 7th was formally raised.<sup>e</sup>

Although the decree of October 5, 1900, had destroyed the exclusive concession of the Orinoco Shipping & Trading Co., Limited, for navigation between Ciudad Bolivar and Port of Spain, Trinidad, advantage was not actually taken of this revocation by the competitors of the Orinoco Shipping & Trading Co., until August 2, 1902, when the ship "*Rescue*" was cleared by the Venezuelan authorities in Trinidad for the Orinoco River ports via the Macareo Channel.<sup>f</sup> From this time on, notwithstanding the blockade of Ciudad Bolivar and other Orinoco River ports on June 28, 1902, which was not raised until March 11, 1903, the vessels of the competitors of the Orinoco Shipping & Trading Co., were constantly permitted to clear for Ciudad Bolivar and other Orinoco River ports with the assistance and approbation of the Venezuelan Consul at Trinidad,

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<sup>a</sup> For text of this decree see Appendix p. 1154.

<sup>b</sup> For text of this decree see Appendix p. 1156.

<sup>c</sup> For text of this decree see Appendix p. 1158.

<sup>d</sup> For text of this decree see Appendix p. 1159.

<sup>e</sup> For text of this decree see Appendix p. 1161.

<sup>f</sup> See Appendix, Record, pp. 410, 571, and certificate from Harbor master Saunders, p. 455.

although this Consul persistently declined to approve or assist the clearing of the vessels of the Orinoco Shipping & Trading Co., which by such discrimination suffered large losses during the months from June to November of the year 1902, before they were enabled temporarily to resume navigation under the American flag.

In the meantime the difficulties of the Orinoco Shipping & Trading Company growing out of the interference with and detention of its steamers, the failure on the part of the Venezuelan Government to pay the second installment of 100,000 bolivares due under the contract of May 10, 1900, the annulment of the valuable exclusive franchise owned by the Company and the revocation of the six years extension of this franchise, and the discriminatory refusal of the Venezuelan Consul at Trinidad to permit the clearance of the Company's vessels, had been made the subject of repeated representations on the part of the Orinoco Shipping & Trading Company to the British Government, since the company was organized under the British companies' acts, and to the United States Government, since American citizens owned 99% of its stock.

Under date of November 8, 1900, the British Foreign Office wrote to Mr. Olcott, the managing director of the Orinoco Shipping & Trading Company as follows:<sup>a</sup>

SIR: With reference to your letter of the 26th ultimo respecting your Company's Concession of the right of exclusive navigation of the Macareo and Pedernales Rivers, I am directed by the Marquess of Salisbury to inform you that Her Majesty's Charge d'Affaires at Caracas has reported by telegraph that he and the United States Representative, have made friendly representations to the Venezuelan Government on the subject of the decree declaring the navigation of those rivers to be free.

I am, Sir, your most obedient, humble Servant,

(Sgd) MARTIN GOSSELIN.

R. MORGAN OLCOTT, Esq.,

*Orinoco Shipping & Trading Company,*

*155, Fenchurch Street, E. C.*

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<sup>a</sup>See Appendix Record p. 382; see generally Appendix Record, pp. 381 to 391.

Later, however, under date of January 15, 1901, the British Foreign Office addressed the following communication to the Company:<sup>a</sup>

[45] SIR, With reference to your letter of the 5th. instant respecting the claim of your Company to the exclusive navigation of the Macareo and Pedernales rivers, I am directed by the Marquess of Lansdowne to express His Lordship's regret that after full consideration of the matter he does not consider it to be one in regard to which Her Majesty's Representative can properly be instructed to take diplomatic action.

I am, Sir, Your most obedient, humble Servant,

(Signed) MARTIN GOSSELIN.

THE SECRETARY, *Orinoco Shipping & Trading Company*, 155, Fenchurch Street, E. C.

This decision was adhered to by the Foreign Office in another letter, dated February 6, 1901.<sup>b</sup>

On account of this attitude of the British Government, which would not seem to be unnatural in view of the fact, as before stated, that the British nationality of the Orinoco Shipping & Trading Company was purely accidental and technical, 99% of its stock being owned by native-born American citizens, the equitable owners of the Company decided to re-organize under an American charter and, accordingly, on January 31, 1902, the Orinoco Steamship Company was duly incorporated in accordance with the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act concerning Corporations (Revision of 1896.)" The American stockholders of the Orinoco Shipping & Trading Company who subscribed, paid for and at all times owned at least 99% of its total capital stock and bonded indebtedness, were Alfred B. Scott, J. Van Vechten Olcott, and R. Morgan Olcott, and the stockholders who subscribed for and still own the entire capital stock of the Orinoco Steamship Company are Alfred B. Scott, J. Van Vechten Olcott, R. Morgan Olcott, Levi S. Tenney and Duncan B. Cannon, all citizens of the United States and of the State of New York.<sup>c</sup>

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<sup>a</sup> See Appendix, Record, p 385.

<sup>b</sup> For text of this letter see Appendix, p. 387.

<sup>c</sup> See Appendix, pp. 127.

The articles of incorporation of the Orinoco Steamship Company, which are elsewhere set forth in full,<sup>a</sup> authorizes the Orinoco Steamship Company, among its other corporate powers, to acquire and take over as a going concern the business carried on by the Orinoco Shipping & Trading Company, Ltd., of London, England, and all the assets and liabilities of the proprietors of that business owned, used, acquired or incurred in connection therewith. On April 16, 1903, the Orinoco Steamship Company was duly registered in Venezuela in accordance with the provisions of the Venezuelan Code of Commerce regarding the registration of joint stock companies,<sup>b</sup> and the transfer from the Orinoco Shipping and Trading Company to the Orinoco Steamship Company was likewise registered on June 16, 1903. This registration and transfer were duly published in the *Gaceta Municipal* No. 191 of May 2, 1903. The claim of the Company was duly presented by the Government of the United States to the United States and Venezuela Mixed Commission, which met at Caracas June 14, 1903, under the provisions of the protocol of February 17, 1903. The result of this arbitration was disastrous to the Company for reasons which will be made apparent in the next section of this case and inasmuch as it was no longer possible for the Company to fulfill its obligation under its contract on account of the persistent refusal of the Venezuelan officials in Trinidad to permit the clearance of its vessels, it was compelled to sell its steamers for the best price obtainable and retire from business. Naturally, the only customer in a position to purchase the steamers and other property of the company at any price was one who had secured in advance the approval of the purchase by the Venezuelan Government and, therefore, although Ellis Grell, who was in treaty for the purchase of the Company's steamers, had indicated his willingness to pay the sum of \$200,000 therefor, he ascertained after a hasty trip of investigation to Caracas that a favored purchaser had already been selected by the Venezuelan Government and that it was inexpedient for others to attempt to enter the field and he so advised Mr. Olcott, the President of the Orinoco

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<sup>a</sup> For text of articles of incorporation, see Appendix, Record, p. 145.

<sup>b</sup> For text of certificate of registration, see Appendix, p. 1164.

Steamship Company.<sup>a</sup> Nothing remained to be done but to sell to the purchaser selected by the Venezuelan Government at the best price obtainable and, accordingly, the steamships and other properties of the Company representing a cash outlay of over \$700,000 were sold to Dalton & Company, of Ciudad Bolivar for the sum of \$160,000 cash. A Company was then formed at Ciudad Bolivar by Dalton & Co., known as La Linea de Vapores del Orinoco, in which General Cipriano Castro, then President of Venezuela, was a large stockholder.<sup>b</sup> This Company duly became the assignee of a contract concluded on March 28, 1904, and duly ratified by the Venezuelan Congress on April 18, 1904, the salient provisions of which are as follows:

ART. 1. Angel Maria Corao, representing and holding a power of attorney from General Manuel Corao (who will hereafter be called the Contractor), agrees to establish, within six months from the date on which this contract takes effect, a steamship line for the navigation of the Orinoco and its affluents and sub-affluents Apure, Meta, Arauca, Apurito, Caura, Masparro, Portuguesa, and Cojedes. The steamers of this line may extend their service to the port of La Guaira.

\*            \*            \*            \*            \*            \*

ART. 4. The vessels of the line shall travel under a Venezuelan flag and may touch at Trinidad or Curacao in order to take on supplies and to coal.

\*            \*            \*            \*            \*            \*

ART. 6. The National Government shall enjoy a rebate of fifty per cent on the passenger and freight rates, and the troops and officers embarked by the Government on the steamers of the line shall pay only one-third of the schedule fare.

\*            \*            \*            \*            \*            \*

ART. 10. The National Government authorizes the vessels of the line to navigate on all the mouths of the Orinoco, especially those of Macareo and Pedernalles.

ART. 11. The vessels of the line shall be exempt from any National tax.

ART. 12. The employees of the line shall be exempt from military service, except in case of international war.

ART. 13. All materials, articles, and supplies needed by the Contractor for the establishment and use of the steamship line shall be exempted by the Federal Executive from the payment of import duties, but at all events the Contractor must previously state to the Ministry of Finance what the articles are which he

<sup>a</sup> See affidavit of Mr. Olcott, Appendix, p. 1304.

<sup>b</sup> See affidavits, Appendix, p. 1265 et seq.

intends to import, and said Ministry shall, with a knowledge of the case, issue the necessary orders.

ART. 14. The steamers of the line may take from the National forests such timber as they may need as fuel or for any other purpose, but in no case shall they trade therein.

ART. 15. This contract is exempted from the payment of recording fees.

ART. 16. The duration of this contract shall be fifteen years from the date on which the President of the Union places his "Let it be executed" on the decree by which the National Congress approves the present contract, and during this period of time the National Government shall not make equal or similar concessions to those in this contract, to any person or company for the establishment of navigation lines between the points embraced by the line which owes its origin to the present contract.

With the approval of the Corao contract the third period in the history of the navigation of the Orinoco ended.

#### THE CASE BEFORE THE MIXED COMMISSION OF 1903.

The claim of the Orinoco Steamship Company against the Government of Venezuela was submitted to the United States and Venezuela Mixed Commission established by virtue of the protocol of February 17, 1903. Article 1 of this protocol reads as follows:

##### ARTICLE I.

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its Legation at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States and the other by the President of Venezuela.

It is agreed that an umpire may be named by the Queen of the Netherlands. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first day of May, 1903. The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide,

according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold, or its equivalent in silver.<sup>a</sup>

Mr. Bainbridge, the Commissioner appointed by the United States, and Dr. Grisanti, the Commissioner appointed on the part of Venezuela, having disagreed both as to the jurisdiction of the Mixed Commission to entertain the claim and as to the merits, the entire claim was referred to the Umpire, Dr. Harry Barge, for decision. The claim of the Orinoco Steamship Company embraced the following items as stated in the opinion rendered by the umpire:<sup>b</sup>

1st: \$1,209,700.05 as due for damages and losses caused by the Executive Decree of October 5th, 1900, having this decree annulled a contract-concession celebrated on May 26th, 1894;

2nd: 100,000 bolivares, or \$19,219.19 overdue on account of a transaction celebrated on May 10th, 1900;

3rd: \$149,698.71 for damages and losses sustained during the last revolution, including services rendered to the Government of the Republic;

4th: \$25,000 for counsel fees and expenses incurred in carrying out said claims;

In view of the peculiar phraseology of the protocol giving the Commission jurisdiction over all claims "owned by citizens of the United States of America," in connection with the diplomatic history of the claim, the umpire declared that the two governments had expressly intended to contract themselves out of the ordinary rule of international law which requires that the claims presented by a nation on behalf of its citizens must be national in their origin as well as national in their ownership at the time of presentation. The umpire therefore took jurisdiction of the case as is indicated by the following passage in his opinion:

and therefore it may safely be understood, that it was the aim of the high contracting parties, that claims as these, being at the moment of the signing of the Protocol *owned* by citizens of the United States of North America, should fall under the jurisdic-

<sup>a</sup> For text of protocol of February 17, 1903, see Appendix, p. 89.

<sup>b</sup> For text of the opinion of the umpire see Appendix, Record, p. 686.

tion of the Commission instituted to investigate and decide upon the claims the high contracting parties wished to see settled,

and therefore the jurisdiction of this Commission to investigate and decide claims *owned* by citizens of the United States of North America at the moment of the signing of the Protocol has to be recognized, without prejudice, naturally, of the judicial power of the Commission and its duty to decide upon a basis of absolute equity when judging about the rights the transfer of the ownership might give to claimant against third parties,

for all which reasons the claims presented to this Commission on behalf of the American Company "The Orinoco Steamship Company" have to be investigated by this Commission and a decision has to be given as to the right of the claimant Company to claim what it does claim, and as to the duty of the Venezuelan Government to grant to the claimant Company what this Company claims for.

The umpire then proceeded to the examination of the first and most important item in the plaintiff's claim, namely, the claim for \$1,209,700.05 for damages caused by the Executive Decree of October 5, 1900, throwing open the Macareo and Pedernales channels to general navigation. As to this he said most truly

the main question to be examined is whether the Venezuelan Government by said contract gave a concession for the exclusive navigation of said channels of said river, and whether this concession of exclusive navigation was annulled by said Decree.

An examination of the contract as a whole led the umpire to the conclusion that it did "not show itself as a concession for exclusive navigation of any waters, but as a contract to establish a regular communication by steamers between the duly established principal ports of the Republic." Examining the contract in detail he found that Article XII simply gave permission for the ships of the company leaving Trinidad to navigate the Macareo and Pedernales channels, and that this permission "would only have force for the time till the Government would have fixed definitely the transshipment ports, *which it might do at any moment*, and *till* the necessary installations were made, and not for the whole term of the contract, which according to article thirteen would remain in force for fifteen years."

and whereas therefor it cannot be seen how this contract-concession for establishing and maintaining in force *for fifteen years* a communication between the duly established ports of Venezuela, can be called a concession for the exclusive navigation of the said channels, when the permission to navigate these channels was only annexed to, the permission to call at Trinidad and



would end with that permission, whilst the obligation to navigate between the ports of Venezuela from Ciudad Bolívar to Maracaibo would last;

\*            \*            \*            \*            \*            \*

What is called a concession for exclusive navigation of the mentioned channels is shown to be nothing but a permission to navigate these channels, as long as certain circumstances should exist.

And whereas therefor the contract approved by Decree of the 8th of June 1894 never was a concession for the exclusive navigation of said channels of the Orinoco, and whereas the Decree which reopened these channels for free navigation could not annul a contract that never existed;

all damages claimed for the annulling of a concession for exclusive navigation of the Macareo and Pedernales channels of the Orinoco River must be disallowed.

The umpire then made the following very pertinent query:

Now whereas it might be asked, if the permission to navigate by those channels, given to *the* steamer that on its coastal trip left Trinidad, was not one of the "benefits, concessions and exemptions" that the Government in article 6 promised not to concede to any other line of steamers;

Arguing from what he declared to be the general purpose of the contract, he reached the conclusion that

"the benefit and the exemption granted by this article was not: *to navigate by said channels*,—but: *to hold the character and right of a coastal vessel notwithstanding having called at the foreign port of Trinidad*,—and as this privilege was not affected by the reopening of the channels to free navigation, and the Government by aforesaid Decree did not give any benefit, concession and exemption granted to this concession to any other line of steamers, a claim for damages for the reopening of the channels based on article 6 cannot be allowed. It may be that the concessionary and his successors thought that during all the 21 years of this concession the Government of Venezuela would not definitely fix the transshipment ports, nor reopen the channels to free navigation, and those thoughts based a hope that was not fulfilled and formed a plan that did not succeed;—but it would be a strange appliance of absolute equity, to make the Government that grants a concession liable for the not realized dreams and vanished 'châteaux en Espagne' of inventors, promoters, solicitors and purchasers of concessions."

Throughout all of this discussion of the question of the exclusive character *vel non* of the concession the umpire appears to have assumed that the contingency anticipated by article XII of the concession had actually happened, namely, that the Government had fixed definitely the transshipment ports for merchandise

from abroad, and had made the necessary installations. It is submitted, however, that there was no evidence before the learned umpire upon which such an assumption could have been reasonably founded, and that such assumption is absolutely negatived by the official decrees of the Venezuelan Government with regard to the construction and establishment of the port of Cristobal Colon, which are elsewhere set forth in full.<sup>a</sup>

But the umpire was not content merely to decide that the contract granted no exclusive concession for the navigation of the Macareo and Pedernales channels. He proceeded to hold that even if it were admitted that the reopening of the Macareo and Pedernales channels to general navigation "might furnish a ground to base a claim on (*quod non*)" Article XIV of the concession, which provides that

ART. 14. Disputes and controversies which may arise with regard to the interpretation or execution of this contract shall be resolved by the tribunals of the Republic in accordance with the laws of the nation, and shall not in any case be considered as a motive for international reclamations.

furnished a sufficient answer to any such claim, especially inasmuch as this article embodied the ordinary rule of international law even in the absence of any special contract. The umpire concludes this portion of his opinion with the following passage:

and whereas it has to be admitted that—even if the trick to change a contract for regular coastal service into a concession for exclusive navigation succeeded (*quod non*)—in the face of absolute equity the trick of making the same contract a chain for one party and a screw-press for the other never can have success:—

it must be concluded that article 14 of the contract disables the contracting parties to base a claim on this contract before any other tribunal than that which they have freely and deliberately chosen and to parties in such a contract must be applied the words of the Honorable Mr. Findley, U. S. Commissioner to the claim commission of 1889: "so they have made their bed and so they must lay in it."—

Moreover, it was the opinion of umpire that "the law hath still another hold" upon the present claimant growing out of the language of Article XIII of the contract, which provides that the contract "may be transferred by the contractor to another person or corporation upon previous notice to the Government," and he therefore concluded his opinion in so far as it related to the claim based

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<sup>a</sup>See Appendix, pp. 1187-1196.

on the annulment of the exclusive concession to navigate the Macareo and Pedernales channels with the following statement:

but whereas article 13 of the contract says that it might be transferred to another person or corporation *upon previous notice* to the Government, whilst the evidence shows that this notice has not been previously (indeed ever) given; the condition on which the contract might be transferred not being fulfilled, the "Orinoco Shipping and Trading Company, Limited", had no right to transfer it and this transfer of the contract without previous notice must be regarded as null and utterly worthless;

Wherefore, even if the contract might give a ground to the above examined claim to "The Orinoco Shipping and Trading Company, Limited" (once more *quod non*), the claimant Company as quite alien to the contract could certainly never base a claim on it.

For all which reasons every claim of the Orinoco Steamship Company against the Republic of the United States of Venezuela for the annulment of a concession for the exclusive navigation of the Macareo and Pedernales channels of the Orinoco has to be disallowed.—

In this connection it might be well to refer again to the registration of the articles of incorporation of the Orinoco Steamship Company and of the transfer from the Orinoco Shipping and Trading Company to the Orinoco Steamship Company in due form in accordance with Venezuelan law under date of April 16, 1903.<sup>a</sup>

The umpire disallowed the claim for one hundred thousand bolivars on three grounds:

First,

whereas nothing whatever of any arrangement, in accordance with which it was stipulated to pay, appears in the evidence before the Commission, it might be asked if, on the day this claim was filed, this indebtedness was proved compellable;

Second, on account of the provisions of Article IV of the contract of settlement of May 10 which is identical with Article XIV of the Grell concession, which provides that disputes and controversies which may arise with regard to the interpretation or execution of the contract shall be submitted to the courts of Venezuela and shall not be the subject of international reclamations

for which reason—in addition to everything that was said already upon this question heretofore,—in questions on claims based on a contract wherein such a stipulation is made, absolute equity does not allow to recognize such a claim between such parties before the conditions are realized, which in that contract they themselves made *conditiones sine qua non* for the existence of a claim;

<sup>a</sup> See *supra*, p. 38; see also Appendix, p. 1164.

Third; because in his opinion the evidence showed that the transfer of this claim from the Orinoco Shipping and Trading Company to the Orinoco Steamship Company was never notified to the Venezuelan Government,

and whereas according to Venezuelan Law, in perfect accordance with the principles of justice and equity recognized and proclaimed in the codes of almost all civilized nations, such a transfer gives no right against the debtor when it was not notified to, or accepted by that debtor;

\* \* \* \* \*

and whereas, if the provisions of local legislation far from being objections to the rules of absolute equity are quite in conformity with those rules, it would seem absolutely in contradiction with this equity not to apply its rules, because they were recognized and proclaimed by the local legislation of Venezuela;

and whereas the transfer of credits from "The Orinoco Shipping and Trading Company" to "The Orinoco Steamship Company" neither was notified to, or accepted by the Venezuelan Government, it cannot give a right to a claim on behalf of the last named Company against the Government of Venezuela;

for all which reasons the claim of the Orinoco Steamship Company, Limited, against the Government of Venezuela based on the transaction of May 10th, 1900, has to be disallowed.

In the next place the Company claims \$147,038.79 at which sum it estimates the damages and losses sustained during the last revolution, including services rendered to the Government of Venezuela,

now whereas this claim is for damages and losses suffered and for services rendered from June 1900, whilst the existence of the Company only dates from January 31st, 1902, and the transfer of the credits of "the Orinoco Shipping and Trading Company, Limited," to claimant took place on the first of April of this same year, it is clear from what heretofore was said about the transfer of these credits, that all items of this claim based on obligations originated before said April 1st 1902 and claimed by claimant as indebtedness to the aforementioned Company and transferred to claimant on said April 1st, have to be disallowed as the transfer was never notified to or accepted by the Venezuelan Government.

As to the items dating after the 1st of April 1902 in the first place the claimant claims for detention and hire of the steamships "Masparro" from May 1st to September 18th 1902 (141 days) at 100 pesos daily = 14,000 pesos, and for detention and hire of the steamship "Socorro" from March 21st to November 5th 1902 (229 days) 22,900 pesos, together 37,000 pesos equal to \$28,461.53;

\* \* \* \* \*

And whereas in this case it differs not that the transfer of the steamers was not notified to the Venezuelan Government, as it

was no transfer of a credit, but as the credit was born after the transfer,

\*            \*            \*            \*            \*            \*

and whereas it differs not whether claimant,—as the Government affirms and as evidence seems clearly to show,—if not taking part in the revolution, at all events favoured the revolutionary party, because the ships were not taken and confiscated as hostile ships, but were claimed by the Government, evidence shows, because it wanted them for the use of political interests, and after that use were returned to the owners; for all these reasons there is due to claimant from the side of the Venezuelan Government, a remuneration for the service of the steamer “Masparro” and “Socorro” respectively from May first to September 18th, 1902, (141 days) and from April 1st to November 5th, 1902, (219 days, together 360 days);

\*            \*            \*            \*            \*            \*

wherefor for the detention and use of the steamers “Masparro” and “Socorro” the Venezuelan Government owes to claimant 36,000 (thirty-six thousand) pesos or \$27,692.31.

Dr. Barge then disallowed an item of \$2,520.50 for repairs to the Masparro and \$2,932.98 for repairs to the Socorro on the ground of insufficient evidence, and allowed an item of \$308.00 for certain supplies delivered to the Venezuelan authorities, disallowing a further sum of \$106.60 claimed on similar grounds because of insufficient proof. A sum of \$224.62 for transportation furnished on the request of government officials is allowed. The item claimed for the stoppage of the steamer Bolivar at San Felix when Ciudad Bolivar fell into the hands of the insurgents was disallowed on the ground that the acts of the Venezuelan Government were legitimate under the circumstances.

The sum of \$61,336.20 claimed for losses of revenue from June to November, 1902, caused by the blockade of the Orinoco was disallowed on the ground that the “so-called blockade in reality was only a prohibition to navigate the river in order to prevent communication with the revolutionists at Ciudad Bolivar.” The umpire further held that the Government had a right to discriminate between the vessels of the Orinoco Steamship Company and other vessels, unless it were shown that such discrimination was unwarranted, whereas in the view of the umpire the evidence showed “that the Government had sufficient reasons to believe claimant, if not assisting the revolutionists, at least to be friendly and rather partial to them.” The item was therefore disallowed together with the item of \$25,000 for counsel fees, which shared the

fate of the principal items of the claim to which it was only an incident.

For all which reasons the Venezuelan Government owes to claimant:

	U. S. Gold.
for detention and use of the steamers "Masparro"	
and "Socorro" 36,000 pesos or.....	\$27,692. 31
for goods delivered for use of the Government.....	308. 00
for passages.....	224. 62
<hr/>	
Together total.....	\$28,224. 93

While all the other items have to be disallowed.

Such was the decision of the umpire of the United States and Venezuela Mixed Commission of 1903.

Dr. Barge's decision was rendered February 20, 1904.

The claimant company made seasonable protest to the State Department of the United States and the Department, after due deliberation and after making the very careful re-examination of the merits of the case demanded by the respect due to the decision of the Mixed Commission of 1903, instructed the American Minister at Caracas to endeavor to secure the consent of the Government of Venezuela to the revision of the award in the Orinoco Steamship Company case and the trial of the case absolutely on its merits.<sup>a</sup>

These instructions were carried out by the American Minister in a note to the Venezuelan Minister for Foreign Affairs dated January 30, 1905,<sup>b</sup> and from that time until the date of the signature of the protocol submitting the question of revision to The Hague Tribunal this matter has been from time to time the subject of diplomatic correspondence between the two Governments. The grounds upon which the United States has asked such revision are set forth in the instruction of the Department of State to Minister Russell of February 28, 1907, a copy of which was enclosed in Minister Russell's note of March 30, 1907, to the Venezuelan Minister for Foreign Affairs.<sup>c</sup> That portion of the Department's instruction treating of the Barge decision and explaining the grounds upon which the United States asks its revision is as follows:

The claim of the steamship company was duly submitted to the arbitral tribunal so constituted. The claim consisted of four items: (1) For \$1,209,701.05, which sum the claimant company reckoned

<sup>a</sup> For text of Department's cable see Appendix, p. 749.

<sup>b</sup> For text of this note see Appendix, p. 749.

<sup>c</sup> For text of this note see Appendix, p. 798.

as due for damages and losses caused by the executive decree of October 5, 1900, said decree having, as the company affirmed, annulled its exclusive concessionary right; (2) for 100,000 bolivars, or \$19,219.19, overdue on account of the settlement contract of May 10, 1900; (3) for \$147,638.79, at which the claimant company estimated its damages and losses sustained during the revolution and the value of services rendered by the company to the Government of Venezuela; (4) for \$25,000 for counsel fees and expenses incurred in protecting and pursuing its rights.

The commissioners appointed by the United States and Venezuela having disagreed, the claim was referred to the umpire, Doctor Barge, who awarded \$28,224.93 United States gold to the claimant company, this being the amount which he found due for services, etc., rendered the Venezuelan Government by the claimant company subsequent to the transfer to the claimant of all the rights of the shipping company. Doctor Barge rejected all the other contentions of the claimant, especially refusing to allow damages for the annulment of the alleged exclusive concession held by the shipping company.

After holding that he had jurisdiction over the case the umpire rejected the first item in the claim of the company—the claim for damages caused by the annulment of its exclusive franchise—on three grounds: (1) Because in the opinion of the umpire the concession did not confer the exclusive right claimed by the company; (2) because Article XIV of the concession bars recovery before an international tribunal, even although the exclusive right claimed by the company existed, and even although Article XIV did not prevent the umpire from taking jurisdiction of the case, for by Article XIV the concessionary pledged himself not to submit any dispute or controversy which might arise with regard to the interpretation or execution of the contract to any but a Venezuelan tribunal; (3) because the transfer from the Orinoco Shipping and Trading Company to the claimant had never been notified to the Government of Venezuela in accordance with the terms of Article XIII of the concession.

The second item in the claim of the company for 100,000 bolivars was rejected by the umpire, first upon the suggestion that it had not been satisfactorily proved that the sum claimed was then due, but principally upon two of the grounds already given for rejecting the company's principal claim in regard to the exclusive franchise, namely, on account of the provision of the contract binding the company to seek redress only in the local courts and because the Venezuelan Government had not been notified of the transfer of the claim from the Orinoco Shipping and Trading Company to the present claimant.

Of the various sums, amounting in all to \$147,638.79, which, grouped together, constitute the third item in the company's claim, the umpire allowed \$28,224.93 and disallowed the remainder.

Of this amount about \$60,000 appear to have been disallowed for reasons going to the merits of the claim, and \$49,978.76, practically all the remainder, were disallowed upon the ground that the transactions upon which the claim for this sum was founded took place prior to the transfer from the Orinoco Shipping and Trading Company to the claimant, and the transfer had never been properly notified to the Venezuelan Government.

The item of \$25,000 for counsel fees and expenses shared the fate of the greater portion of the company's claim and was disallowed.

It is a reexamination of this award before an impartial and competent tribunal that the claimant now asks.

To this reasonable request that the case of the Orinoco Steamship Company be reopened and that the case be submitted in its entirety to an impartial and international reexamination the Venezuelan Government sets up as a bar the fact that this decision of the "American-Venezuelan Mixed Claims Commission is final, and that to reopen a decision of a court of arbitration would be to disregard the finality of such decision.

To this there is an obvious and very reasonable reply, namely, that a decree of a court of arbitration is only final provided the court acts within the terms of the protocol establishing the jurisdiction of the court, and that a disregard of such terms necessarily deprives the decision of any claim to finality. In this individual case the protocol specifically stated that "the commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation."

The equity meant is clearly not local equity—that is, not necessarily the equity of the United States or the equity of Venezuela, but the spirit of justice applied to a concrete question irrespective of local statute, ordinance, or interpretation.

Attention has already been called to the expressed terms of the protocol defining the jurisdiction of the commission to be established thereunder, and it will be recalled that all claims owned by citizens of the United States against the Republic of Venezuela were to be submitted which had not been settled by diplomatic agreement or arbitration between the two Governments. It was, furthermore, stated in express terms that these claims so owned, unsettled, and outstanding should be "examined and decided" by the mixed commission to be appointed. Nevertheless, in express violation of the terms of the protocol, claims amounting in the aggregate to about \$70,000, partially for money loaned and admittedly due to the claimant company, partially for services rendered by the claimant's vessel to the Venezuelan Government, and for damages for the detention of such vessel, were disallowed by the umpire.

To say that these claims should be rejected for lack of jurisdiction would be as was said by Ralston, umpire, in the Martini case



(Ralston's Report, p. 841), "equivalent to claiming that not all \* \* \* claims were referred to (the commission), but only such \* \* \* claims as have been contracted about previously, and in this manner and to this extent only the protocol could be maintained," and it is equally vicious in law and equally disastrous in fact to the claimant to assume technical jurisdiction over the claim and then disallow it, evidently on its merits, because of the clause in question, as the umpire did. For this Government can never admit that a claim unpassed upon by a Venezuelan court is not a claim which it has a right to protect and enforce, and by protocol to submit to an international convention to the end that such claim in its entirety be passed upon, or, to quote the exact language of the protocol, be "examined and decided" upon its merits irrespective of any contract or waiver which the holder of the claim may, in his private capacity, have made with the contracting government.

And not only did the umpire in disallowing these claims upon the ground of the Calvo clause, do violence to the terms of the protocol in the manner already stated, namely, by refusing to examine them on their merits, but also by disallowing these claims he violated the express provisions of the protocol that all claims submitted should be examined in the light of absolute equity "without regard to objections of a technical nature, or of the provisions of local legislation."

It is difficult to see how the umpire could more clearly have disregarded the plainest principles of justice and equity than to disallow the claims of the claimant upon the ground that it had violated the Calvo clause in seeking redress by international reclamation, when admittedly the defendant Government violated every provision of the contract by totally annulling it. To quote the language of the umpire, "in the face of absolute equity the trick of making the same contract a chain for one party and a screw-press for the other never can have success." (Ralston's Report, p. 21.) And it is doubly difficult to understand the reasoning by which one party to a contract may violate all its terms by annulling it and yet refer to those very terms as existent and measuring the rights of the claimant seeking redress.

Again the umpire disregarded the express terms of the protocol above quoted when he gave as another reason for disallowing these same claims, amounting to about \$70,000, that either by the terms of the contract with the company or by provision of Venezuelan law it was necessary for the claimant to notify the Venezuelan Government, the other party to the contract and the debtor, of the transfer of the claims in question from the Orinoco Shipping and Trading Company to the Orinoco Steamship Company, for a clearer illustration could hardly be found of a stickling for technicalities and disregard of general equity than this ruling. Absolute equity in Anglo-Saxon countries does not require the creditor to notify the debtor of the transfer of a debt provided said transfer

does not injuriously affect the rights of the debtor, and absolute equity does not mean the technical provision of the Venezuelan law or the technical requirements of the contract between the parties. Absolute equity assimilates knowledge to specific notice according to the requirements of local legislation. Of the transfer in question the Government had actual knowledge.

While this Government believes that such a disregard of the express terms of the protocol justifies a reopening and a resubmission of the entire case to an impartial tribunal there are other reasons which tend to discredit the judgment in its entirety.

The claimant always contended that the franchise granted by the Grell contract was an exclusive franchise to ply between a foreign port and Trinidad and to use at the same time the channels which were exclusively reserved to coastal trade. In other words, the company was to engage in foreign commerce, but was to possess at one and the same time the right to use certain channels which it would not have had the right to use but for the concession. While this would in itself have been a considerable advantage, the benefit of the contract, according to the claimant, consisted in the fact that the company was to possess the exclusive right to navigate, to trade with foreign ports, and yet to use the channels reserved to coastal trade, and that during the continuance of the concession to the company no like privilege would be extended to any competing company.

In the opinion of the umpire the exclusiveness was not a matter of law, but he overlooked the important and fundamental point that the company was to exercise exclusively the right and privilege specified in the concession until such time as the Venezuelan Government should fix certain points of transshipment and make the necessary installation. Supposing that the umpire was right in his construction of the contract, which is not admitted, that the exclusiveness claimed by the company did not exist in law, it necessarily follows that the exclusiveness existed in fact, and the company was therefore entitled to the exclusive right claimed until the Venezuelan Government divested that right by establishing points of transshipment and making the necessary installations. In other words, the fixing of these various points of transshipment and the establishing of the necessary installations were made a condition precedent to the deprivation of any exclusive right which the company, as a matter of law or as a matter of fact, enjoyed.

The judgment of the umpire, therefore, disregarding these simple yet essential considerations is wholly unacceptable. He did, indeed, take jurisdiction, but the error committed was so gross and so palpable that this Government can not ask its citizens to accept this judgment as a finality.

Although these contentions have been called at various times to the attention of Venezuela and the request made courteously and with confidence that the claimant's case in its entirety be

submitted to a reexamination before a competent and impartial tribunal, the Venezuelan Government has interposed curtly that "the decisions of the commissioners, and in the event of their disagreement, those of the umpire, shall be final and conclusive." At the very moment and almost in the same breath that Venezuela declared the finality of the judgments of the commission, she has been busy protesting Belgian and Mexican awards, although the protocols under which these two commissions were established provided "the decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive." It would appear, therefore, to a disinterested person, that judgments in favor of Venezuela are final and conclusive, but that judgments adverse to Venezuela are not final nor at all conclusive.

In this conflict between theory and practice this Government not unnaturally looks to the practice of Venezuela.

It is, however, apposite to call the attention of the Venezuelan Government to the fact that the United States has granted on various occasions the request that it now confidently makes; that the United States, at the request of Mexico, set aside an unjust arbitral award, and that, as Venezuela may doubtless recall, at its express and distinct request, the United States set aside the findings of the United States and Venezuela Commission of 1886 and appointed a new commission under a convention signed in 1888, whereby a saving resulted to Venezuela, amounting in the aggregate, including interest, to nearly a million and a half dollars, as compared with the findings of the first commission.

In view, therefore, of the circumstances of the case and the express violations of the terms of the protocol or errors in the final award, arising through gross errors of law and fact, and in the light of the history of both nations in the matter of arbitral awards, this Government insists upon and confidently expects a reopening and a resubmission of the entire case of the Orinoco Steamship Company to an impartial and a competent tribunal.<sup>a</sup>

It is respectfully, but none the less confidently, submitted on behalf of the United States, that the record in this case affirmatively and conclusively shows that American citizens, represented by the Orinoco Steamship Company, have on the faith of concessions granted by the Government of Venezuela invested more than seven hundred thousand dollars cash in the development of navigation on the Orinoco; that these concessions were arbitrarily revoked by the act of the Venezuelan Government and the business of the claimant company was not only hampered and finally destroyed, but the company was even compelled to sell its tangible assets for an entirely inadequate sum and to

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<sup>a</sup> For text of this note, see Appendix, pp. 766-797.

forego its expectation, reasonable and legitimate as measured by actual experience, of profitable returns during a definite period of years upon a valuable property.

The United States, on behalf of the Orinoco Steamship Company requests the International Tribunal at The Hague to decide the first question propounded by the protocol under which the present case is submitted, namely, "Whether the decision of Umpire Barge, in this case, in view of all the circumstances and under the principles of international law, is not void, and whether it must be considered so conclusive as to preclude a reexamination of the case on its merits" by setting aside the decision so rendered by the Umpire of the United States and Venezuela Mixed Commission of 1903 on account of its clear and palpable disregard of the terms of the submission and the numerous and essential errors of law and fact upon which it is founded. And the United States furthermore requests that this high Tribunal proceed in accordance with the terms of the protocol to "hear, examine and determine the case and render its decision on the merits."

Upon such examination the United States prays the Court for an award in favor of the United States in behalf of the Orinoco Steamship Company in the sum claimed by the United States before the United States and Venezuela Mixed Commission of 1903, namely, \$1,401,539.05 in United States Gold or its equivalent, with interest.

In support of this prayer the United States submits herewith the documents and evidence on which it relies.

WILLIAM CULLEN DENNIS,

*Agent of the United States.*

FREDERIC DUNCAN MCKENNEY,

*Counsel for the United States.*













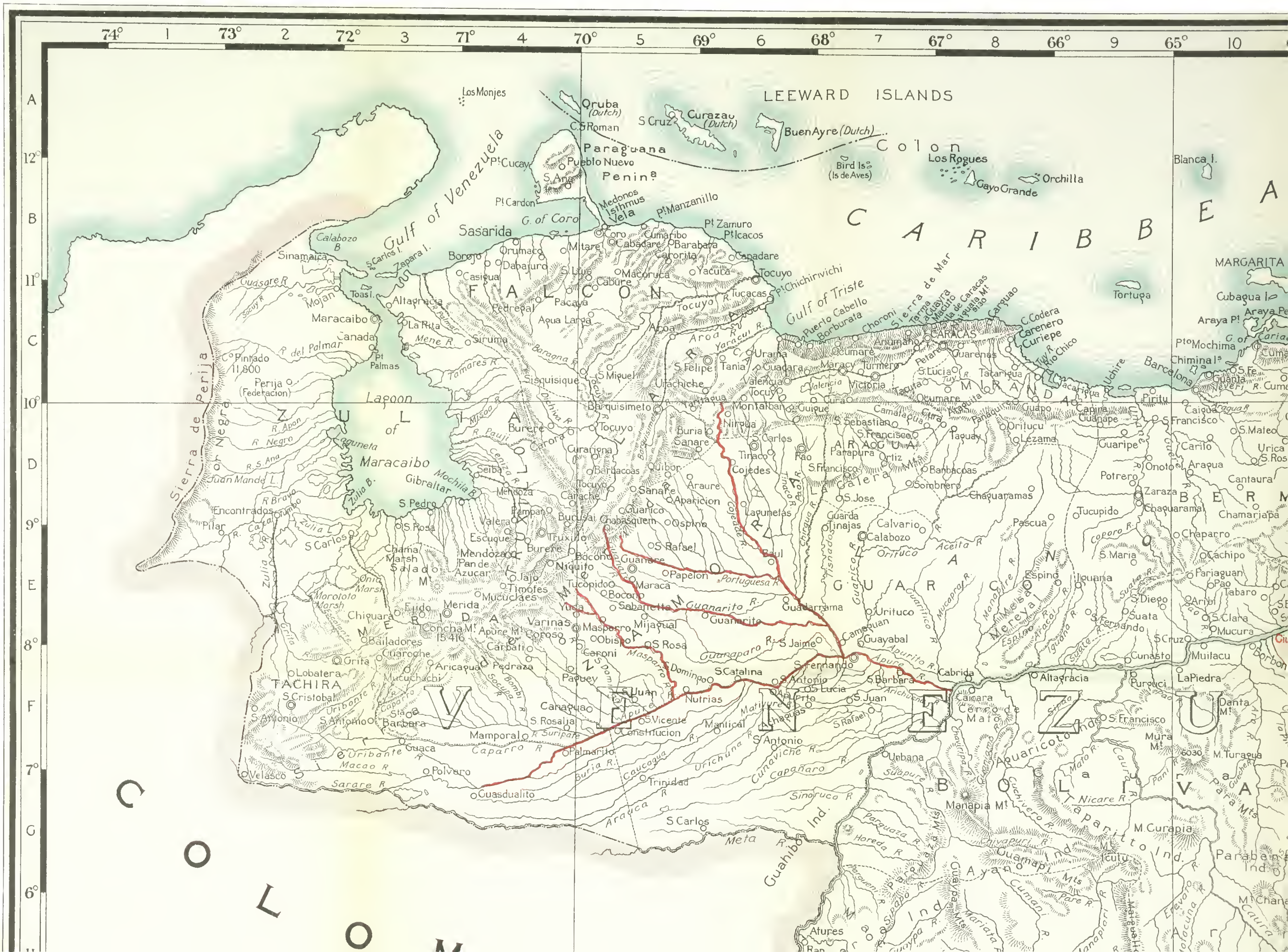


















# VENEZUELA

Enlarged from 1909 Edition of  
STANFORD'S LIBRARY MAP OF SOUTH AMERICA

*Verified by the  
U.S. Coast and Geodetic Survey*

Nautical Miles  
0 10 20 30 40 50 60 70 80 90 100

74° 1 73° 2 72° 3 71° 4 70° 5 69° 6 68° 7 67° 8 66° 9 65° 10

7°  
6°  
5°  
4°  
3°  
2°  
1°

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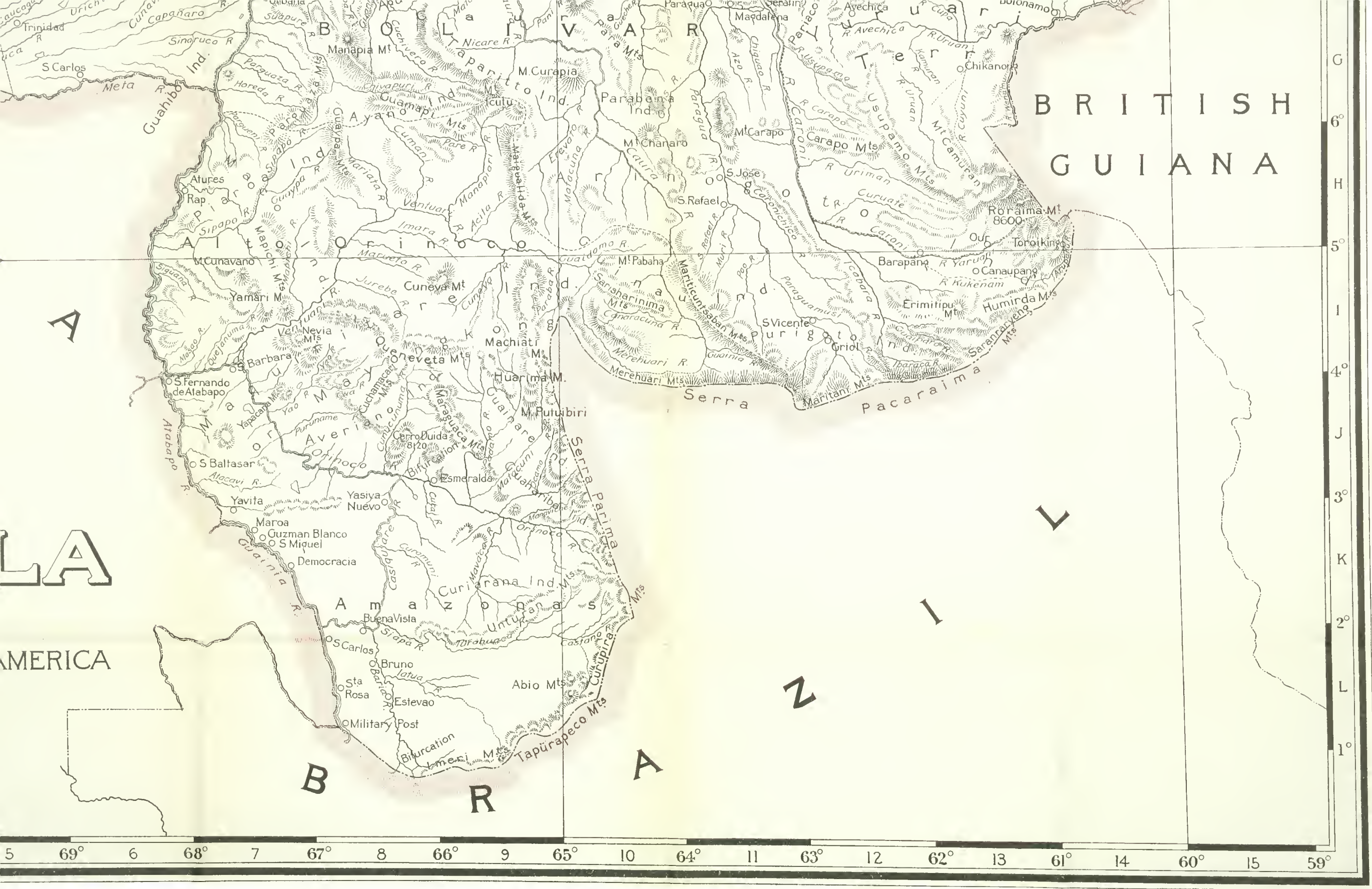
A

B

R

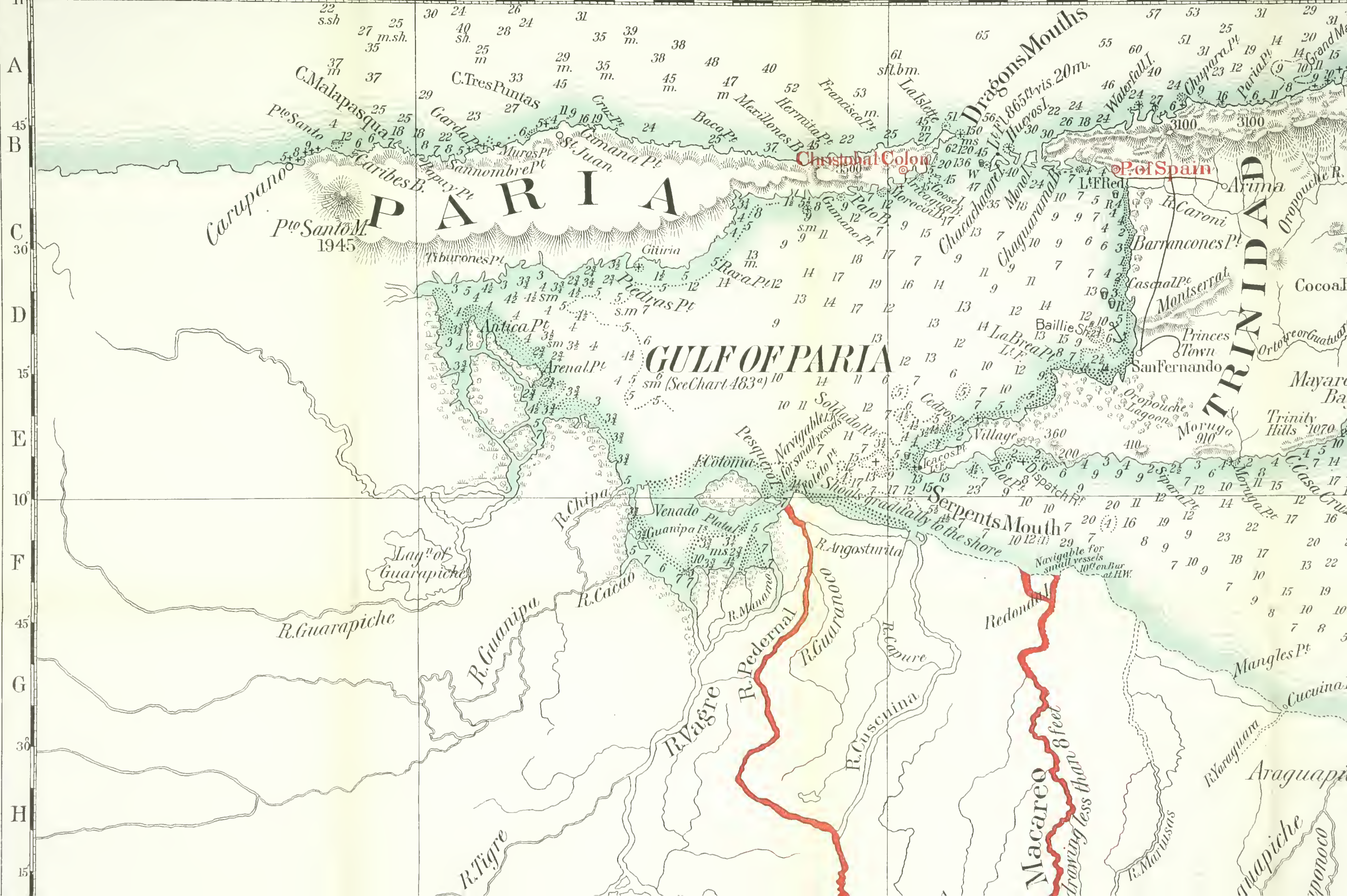
A







45° 1 30 2 15 3 63° 4 45 5 30 6 15 7 62° 8 45 9 30 10 15 11



# GULF OF PARIA

(See Chart 483a)

TRINIDAD

Dragons Mouths

Serpents Mouth

Macareo

8 feet drawing less than

R. Guarapiche

R. Guanipa

R. Cacao

R. Vagre

R. Pedernal

R. Guaranara

R. Cuscuina

R. Angosturita

Redondal

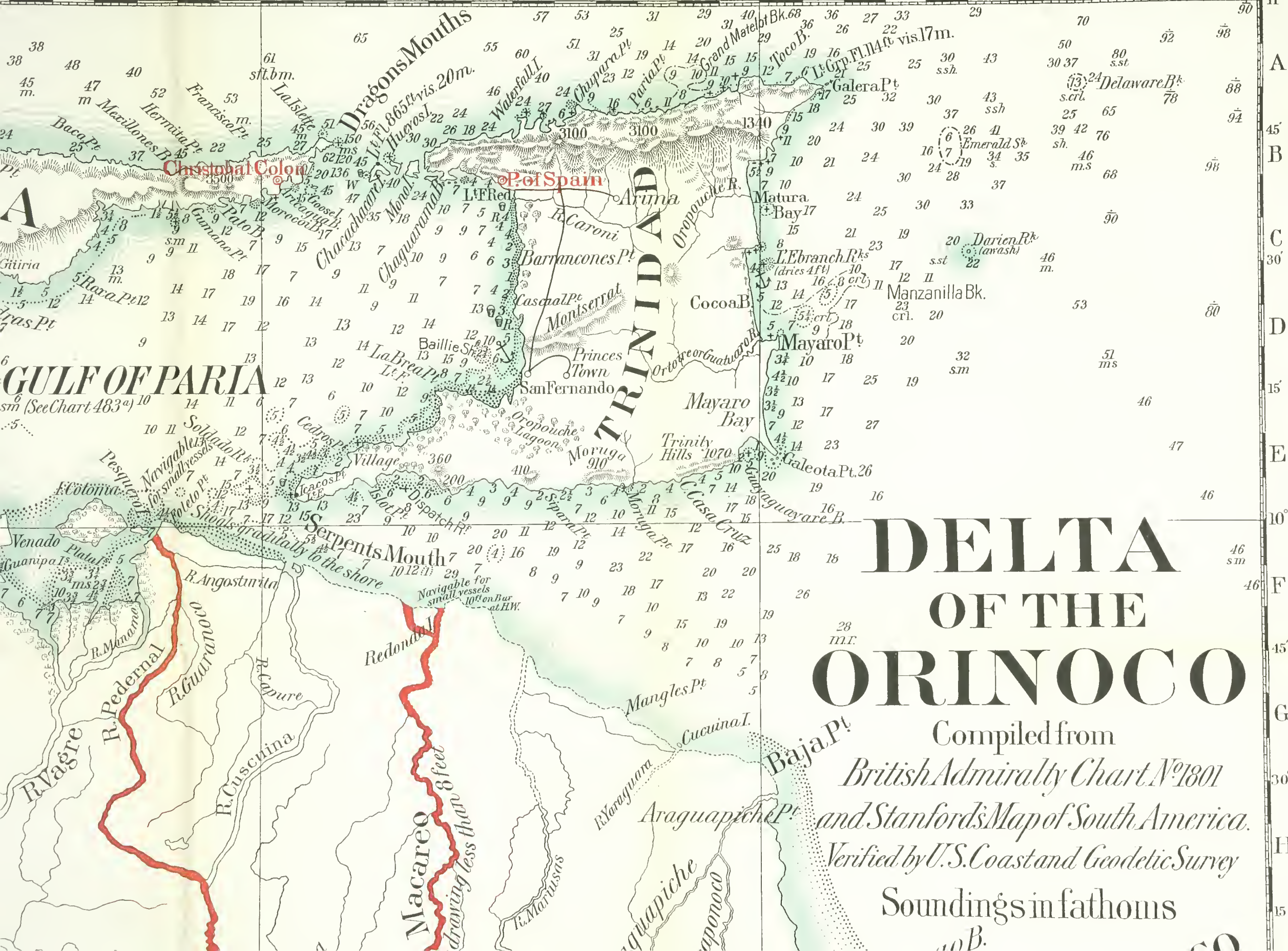
R. Maricao

Araguapiche

ponoco



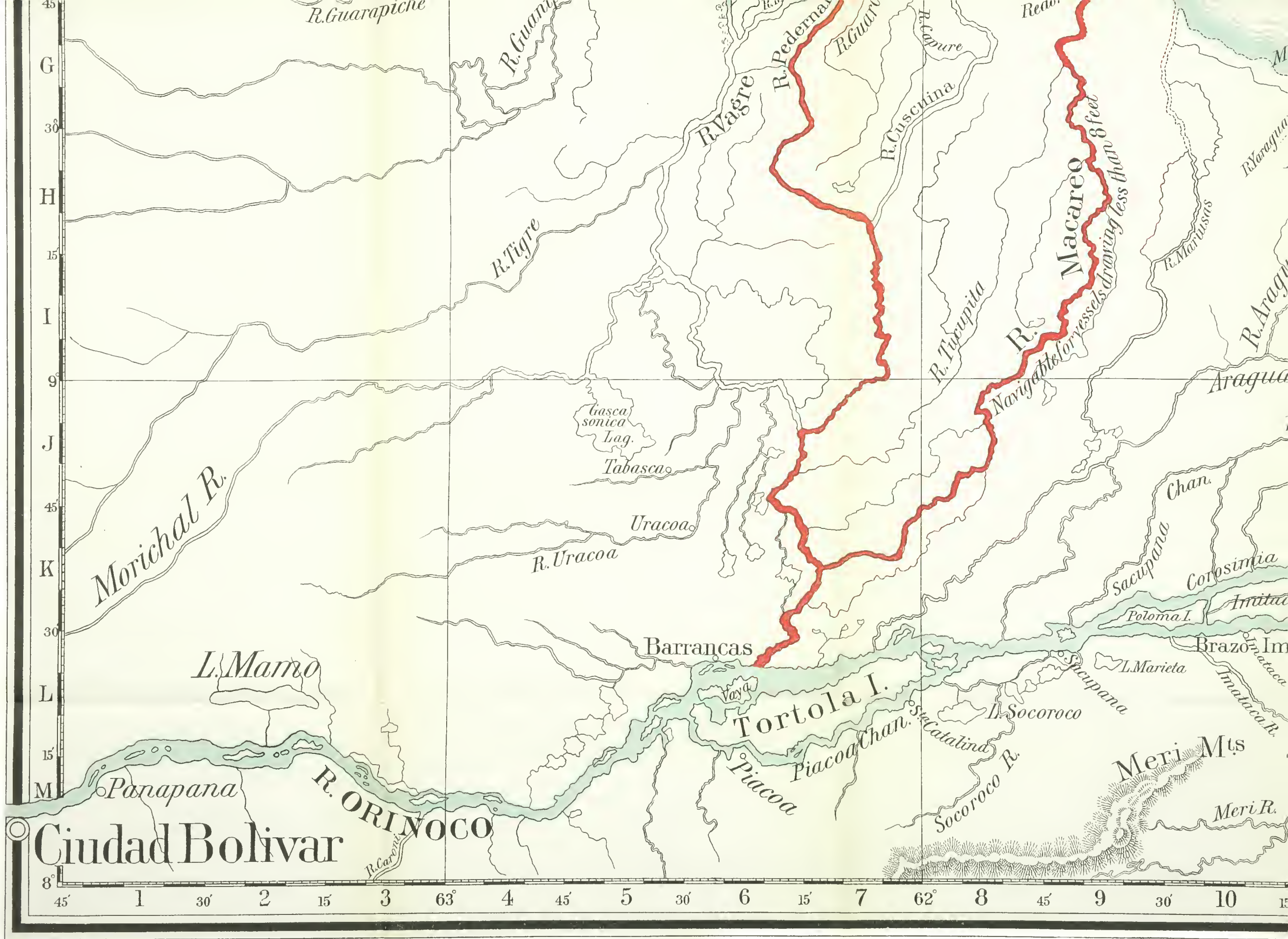
30 6 15 7 62° 8 45 9 30 10 15 11 61° 12 45 13 30 14 15 15 60° 11°



# DELTA OF THE ORINOCO

Compiled from  
*British Admiralty Chart N°1801*  
and *Stanford's Map of South America.*  
Verified by *U.S. Coast and Geodetic Survey*  
Soundings in fathoms



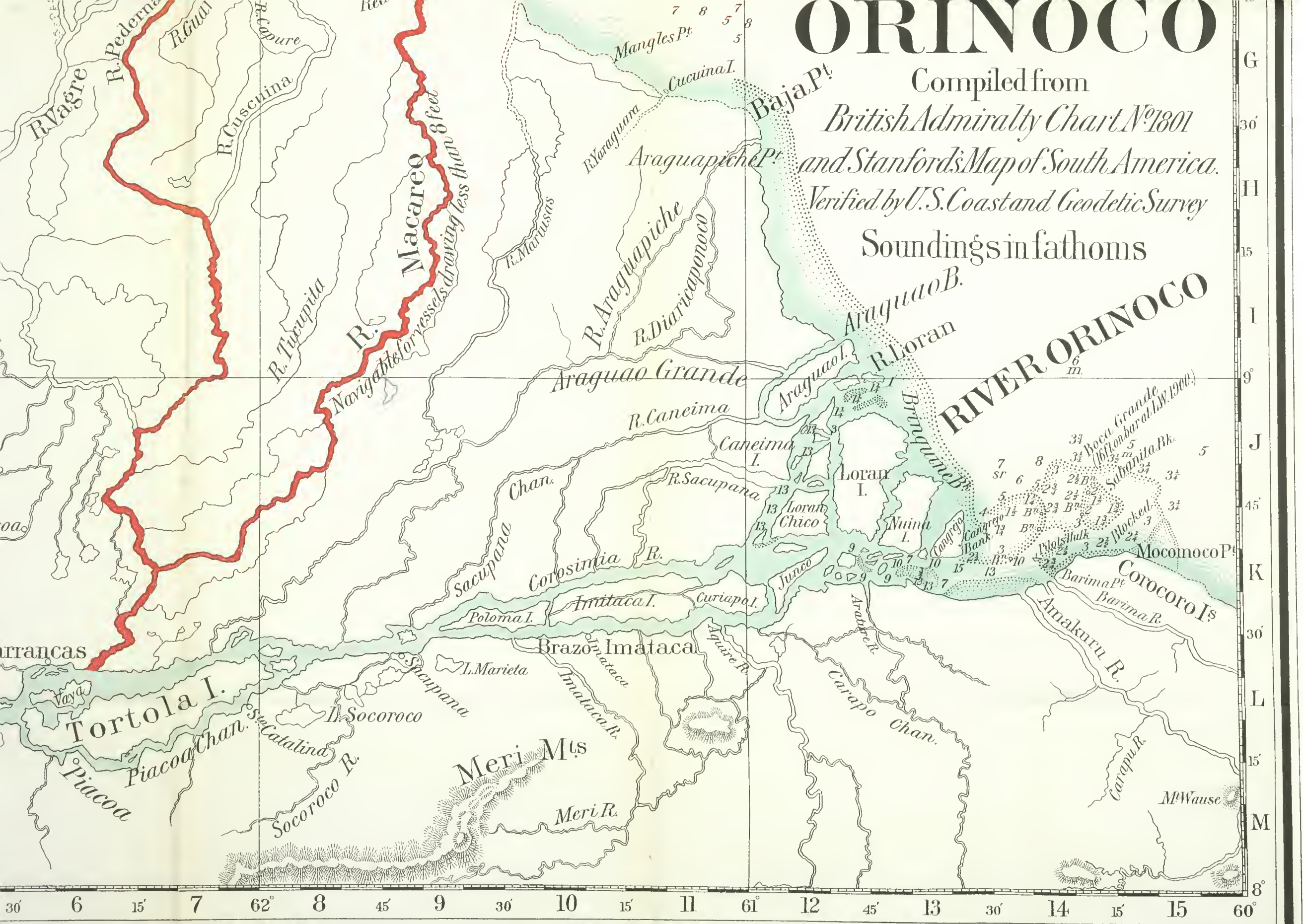




# ORINOCO

Compiled from  
*British Admiralty Chart No. 1801*  
and *Stanford's Map of South America.*  
Verified by U.S. Coast and Geodetic Survey  
Soundings in fathoms

## RIVER ORINOCO



Approximate Scale of Nautical Miles





